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Title 3—

Proclamation 10808 of September 12, 2024

The President

30th Anniversary of the Violence Against Women Act

By the President of the United States of America

A Proclamation

Tomorrow, we celebrate the 30th anniversary of the Violence Against Women Act (VAWA), which has transformed our Nation's response to sexual assault, domestic violence, dating violence, and stalking while also providing communities with the tools necessary to support survivors and save lives. I was proud to write VAWA and champion it three decades ago, and I am even prouder to honor its lasting legacy today.

Before VAWA, our country did not talk about violence against women as a national epidemic or an issue the Government had to address. As a society, we often overlooked domestic violence—calling it a family matter, not a crime. Too few police officers were trained on how to properly respond to domestic violence, and there were not enough places for survivors to go for the help they needed or the justice they deserved. There was no national hotline, and many survivors' stories went untold.

That is why, as a United States Senator, I worked closely with brave and committed survivors and advocates to write VAWA—and with the incredible efforts of activists and women's rights leaders, we got it passed. Courageous survivors spoke out about the abuse they had endured, bringing this hidden epidemic out of the shadows and changing the way America saw this issue. VAWA was a game changer. We began to increase justice for survivors and accountability for perpetrators. And we finally acknowledged ending gender-based violence as a shared priority for the Nation and turned to developing the coordinated response that survivors need and deserve.

Beginning in 1994, VAWA has delivered critical resources and support to help survivors of gender-based violence. Shelters, rape crisis centers, housing, and legal assistance were made available, and funding was provided to train law enforcement, prosecutors, advocates, and judges to improve our justice system's response to survivors. We also created the first-ever National Domestic Violence Hotline, which has provided millions of people with lifesaving, confidential support and this year answered its seven millionth call.

I have worked across the aisle to reauthorize VAWA four times since its initial signing, each time making this critical law even stronger. We strengthened protections against stalking, dating violence, trafficking, and sexual assault, expanded access to justice for Tribal communities, and improved services for immigrant, older adult, and LGBTQI+ survivors, among other underserved communities. As President, I signed the most recent reauthorization of VAWA in 2022, and secured the highest-ever funding level for VAWA implementation. We provided support for survivors and invested in prevention efforts and educational programs so that we can put a stop to violence and abuse before it occurs. And we established a new Federal civil cause of action for individuals whose intimate visual images are disclosed without their consent.

My Administration has prioritized putting an end to gender-based violence even beyond VAWA. I signed the most significant gun safety law in nearly three decades, which narrowed the "boyfriend loophole" to help keep guns out of the hands of domestic abusers. And I established the first-ever White

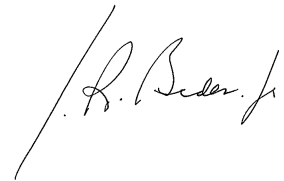
House Office of Gun Violence Prevention. We put in place new protections to support survivors and address sexual assault and sexual harassment in the workplace and released the first-ever National Plan to End Gender-Based Violence, an all-of-government approach to preventing and addressing all forms of gender-based violence. And through the American Rescue Plan, we have invested \$1 billion in supplemental funding for rape crisis centers, community support organizations, and other services for gender-based violence survivors.

We have led historic, bipartisan military justice reforms to ensure that prosecutorial decisions in cases of gender-based violence are fully independent from the chain of command and better protect survivors in our military. My Administration has restored and strengthened vital protections under Title IX to help keep students and employees safe from sexual assault and harassment on campus. And Vice President Kamala Harris and I launched a Federal task force that has taken concrete steps toward prevention, accountability for perpetrators, research, and support for survivors of online harassment and abuse, including launching the first 24/7 national helpline for survivors of image-based abuse.

When I presented VAWA to the Senate all those years ago, I envisioned a world where every woman could live free from fear, free from violence, and free from abuse. We have made tremendous strides toward achieving this vision, but there is still much more to do. On this milestone anniversary, let us recommit to creating a society that is truly safe and where we all agree that even one case of gender-based violence is too many. And let us honor the survivors and advocates, whose powerful voices and tireless dedication have changed our world for the better.

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 September 13, 2024, as the 30th anniversary of the Violence Against Women Act. I call upon each of us to change the culture of violence against women and provide meaningful support to all survivors. Together, we can transform the country and build a Nation where all people live free of violence and abuse.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of September, 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-ninth.

A handwritten signature in black ink, appearing to read "Joe Biden", with a long, sweeping horizontal line extending to the left.

Rules and Regulations

Federal Register

Vol. 89, No. 180

Tuesday, September 17, 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.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1800

RIN 2700-AE77

[NASA Document No: NASA-24-060; NASA-2024-0010]

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule amends NASA's regulations on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, to align with the Office of Management and Budget's (OMB) April 2024 revisions to its guidance on grants and cooperative agreements, now titled "OMB Guidance for Federal Financial Assistance."

DATES: This direct final rule is effective October 1, 2024, without further action, unless adverse comment is received by October 17, 2024. If adverse comment is received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Submit comments identified by RIN 2700-AE77, using the following methods:

- *Regulations.gov*: <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by following the online instructions for submitting comments. Please note that NASA will post all comments on the internet without changes, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Laila Ouhamou, Laila.ouhamou@nasa.gov, telephone 202-358-9742.

SUPPLEMENTARY INFORMATION:

I. Background

On April 22, 2024, OMB issued a final rule revising the Uniform Guidance for

Federal Financial Assistance (89 FR 30046). This was the result of a comprehensive process to revise and strengthen title 2 of the Code of Federal Regulations ("2024 Revisions") with multiple opportunities for the public to provide feedback. OMB then issued OMB Memo M-24-11, "Reducing Burden in the Administration of Federal Financial Assistance" which provided implementation guidance to agencies. This memo directs agencies to implement the 2024 Revisions quickly and consistently but no later than October 1, 2024, and encourages agencies to streamline communications with the public. Title 2 CFR part 1800, last amended on November 12, 2020 [85 FR 71815], adopts OMB's guidance in subparts A through F of 2 CFR part 200 as NASA's policies and procedures for uniform administrative requirements, cost principles, and audit requirement for Federal awards. NASA is updating 2 CFR part 1800 to maintain consistency with the OMB's revisions to title 2, make technical amendments to clarify the regulation where authorized by OMB's guidance, and implements OMB's 2024 Revisions.

The following changes are implemented by this final rule:

- 2 CFR 1800.2 is revised to clarify that NASA's regulations are adopted to align with the April 2024 version of title 2.
- 2 CFR 1800.3(c) is revised to clarify that NASA requires additional approvals for awards issued to both foreign organizations and foreign public entities and update the current title of the office coordinating approvals.
- 2 CFR 1800.5 is updated to reflect the current website of NASA's grant guidance materials.
- 2 CFR 1800.10 is updated to remove unused acronyms.
- 2 CFR 1800.11 is removed to avoid duplicating definitions already defined in 2 CFR part 200.
- 2 CFR 1800.209 through 1800.211 are revised to improve clarity and remove duplicative language.
- 2 CFR 1800.339 is removed to avoid duplication.
- 2 CFR 1800.400 is removed to avoid duplication.

II. Direct Final Rule and Significant Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it makes non-

substantive changes to NASA's regulations on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to align with OMB's recent amendments to its guidance on grants and cooperative agreements, and also falls under exemptions found in 5 U.S.C. 553(a)(2), which provides that general notices of proposed rule making are not required to the extent a matter relates to an agency's management of grants. No opposition to the changes and no significant adverse comments are expected given that OMB has already received and analyzed public comments related to 2 CFR. However, if NASA receives significant adverse comments, it will withdraw this direct final rule by publishing a document in the **Federal Register**. A significant adverse comment is one that explains:

(1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or

(2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This

requirement does not apply if the agency “certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities” (5 U.S.C. 603). This rule aligns NASA’s regulations on uniform administrative requirements, cost principles, and audit requirement for Federal awards with OMB’s recent amendments to its guidance on grants and cooperative agreements published on April 22, 2024, at 89 FR 30046, which will become effective on October 1, 2024, and does not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Erica Jones,
NASA FAR Supplement Manager.

List of Subjects in 2 CFR Part 1800

Grant programs, Grants administration.

For reasons set forth in the preamble, NASA is amending 2 CFR part 1800 as follows:

PART 1800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

- 1. The authority citation for part 1800 continues to read as follows:

Authority: 51 U.S.C. 20113 (e), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

- 2. Revise § 1800.2 to read as follows:

§ 1800.2 Purpose.

This part adopts the Office of Management and Budget (OMB) guidance in subparts A through F and applicable appendices of 2 CFR part 200 (as revised in April 2024), as supplemented by this part, as the NASA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards. It thereby gives regulatory effect for NASA to the OMB guidance as supplemented by this part.

- 3. Revise § 1800.3 to read as follows:

§ 1800.3 Applicability.

(a) This part establishes policies and procedures for grants and cooperative agreements awarded by NASA to non-Federal entities, for-profit organization, foreign organizations, and foreign public

entities as allowed by 2 CFR 200.101. For supplemental guidance, NASA has adopted section numbers that correspond to those in the OMB guidance in 2 CFR part 200.

(1) Non-Federal entities must follow the policies and procedures appearing in subparts A through F and applicable appendices of 2 CFR part 200 and as supplemented by this part.

(2) Foreign organizations and foreign public entities must follow the policies and procedures appearing in subparts A through E and applicable appendices of 2 CFR part 200 and as supplemented by this part.

(3) U.S. and foreign for-profit organizations must follow the policies and procedures appearing in subparts A through D and applicable appendices of 2 CFR part 200 and as supplemented by this part. The Federal Acquisition Regulation (FAR) at 48 CFR parts 30 and 31, takes precedence over the cost principles in 2 CFR part 200, subpart E for Federal awards to U.S. and foreign for-profit organizations.

(b) Throughout this part, the term “award” refers to both “grant” and “cooperative agreement” unless otherwise indicated.

(c)(1) In general, research with foreign organizations and foreign public entities will not be conducted through grants or cooperative agreements, but instead will be accomplished on a no-exchange-of-funds basis. In these cases, NASA enters into agreements undertaking projects of international scientific collaboration. NASA’s policy on performing research with foreign organizations and foreign public entities on a no-exchange-of-funds basis is set forth at NASA FAR Supplement (NFS) 1835.016–70 and 1835.016–72. In rare instances, NASA may enter into an international agreement under which funds will be transferred to a foreign recipient.

(2) Grants or cooperative agreements awarded to foreign organizations and foreign public entities are made on an exceptional basis only. Awards require the prior approval of the Headquarters Office of International and Interagency Relations and the Headquarters Office of the General Counsel. Requests to issue awards to foreign organizations are to be coordinated through the Office of Procurement, Procurement and Grants Policy Division.

- 4. Revise § 1800.5 to read as follows:

§ 1800.5 Publication.

The official site for accessing the NASA grant and cooperative agreement policies, including notices, internal guidance, certifications, and other source information is on the internet at

<https://www.nasa.gov/general/grants-policy-and-compliance-team/>.

§ 1800.6 [Removed]

- 5. Remove § 1800.6.
- 6. Revise § 1800.10 to read as follows:

§ 1800.10 Acronyms.

The following acronyms supplement the acronyms set forth at 2 CFR 200.0:

NASA National Aeronautics and Space Administration
NFS NASA FAR Supplement

§ 1800.11 [Removed]

- 7. Remove § 1800.11.

§ 1800.209 [Removed]

- 8. Remove § 1800.209.
- 9. Revise § 1800.210 to read as follows:

§ 1800.210 Pre-award costs.

As authorized by 2 CFR 200.308, Revision of budget and program plans, NASA waives the approval requirement for pre-award costs of 90 days or less. For more information on NASA’s pre-award cost policy, see NASA’s policy documents at <https://www.nasa.gov/general/grants-policy-and-compliance-team/>.

- 10. Revise § 1800.211 to read as follows:

§ 1800.211 Information contained in a Federal award.

NASA waives the requirement for the inclusion of indirect cost rates on any notice of Federal award for for-profit organizations.

§ 1800.305 [Removed]

- 11. Remove § 1800.305.

§ 1800.339 [Removed]

- 12. Remove § 1800.339.

§ 1800.400 [Removed]

- 13. Remove § 1800.400.

[FR Doc. 2024–21005 Filed 9–16–24; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2024–0470; Project Identifier AD–2023–00694–A; Amendment 39–22800; AD 2024–15–09]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation Inc. (Type Certificate Previously Held by Cessna Aircraft Company) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Textron Aviation Inc. (Textron) (type certificate previously held by Cessna Aircraft Company) Model 525, 525A, and 525B airplanes with Tamarack active technology load alleviation system (ATLAS) winglets installed per Supplemental Type Certificate (STC) No. SA03842NY. This AD was prompted by a report of the potential for a failure of the ATLAS system in which a loss of load alleviation would be unannounced. This AD requires installing placards on the left-hand inboard edge of the Tamarack active camber surface (TACS) and revising the existing airplane flight manual (AFM) for your airplane. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 22, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 22, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–0470; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Tamarack material identified in this AD, contact Tamarack Aerospace Group, Inc., 2021 Industrial Drive, Sandpoint, ID 83864; phone: (208) 597–4568; website: [tamarackaero.com/customer-support](https://www.tamarackaero.com/customer-support).

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–0470.

FOR FURTHER INFORMATION CONTACT:

Anthony Caldejon, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (206) 231–3534; email: anthony.v.caldejon@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Textron (type certificate previously held by Cessna Aircraft Company) Model 525, 525A, and 525B airplanes with Tamarack ATLAS winglets installed per STC No. SA03842NY. The NPRM published in the **Federal Register** on March 22, 2024 (89 FR 20354). The NPRM was prompted by a report that while accomplishing a reliability improvement program, Tamarack discovered the potential for a failure of the ATLAS system in which a loss of load alleviation would be unannounced. The manufacturer's investigation revealed that failure of either of one of a pair of opto-isolators within the ATLAS Control Unit (ACU) can prevent an enable signal from being sent to the TACS Control Units (TCUs).

The ATLAS system is installed on Textron Model 525, 525A, and 525B airplanes under STC No. SA03842NY and lessens the increased wing loads associated with the installation of winglets. The ATLAS is designed to detect flight conditions and modify airflow at the wing tip accordingly. The ATLAS will draw power constantly to operate the logic circuit and provide power to the actuators to maintain TACS position.

The TCUs include the linear electric actuators and motor controllers that move the TACS. Since the enable signals are not monitored after the opto-isolators, the ACU cannot detect whether the generated signal is reaching the TCUs. The TCUs rely on the enable signal to determine whether to respond to commands from the ACU. If one of the opto-isolators fails, the ACU would not be able to detect that the TCUs were not enabled and the TCUs would not respond to commands from the ACU. Thus, the system would be operating in a mode of unannounced loss of load alleviation. The flight crew would be

unaware of a malfunction of the load alleviation function of ATLAS and could fly the airplane into conditions that exceed the limit load. In addition, fatigue concerns could result in cracking of the airplane's primary structure. If not addressed, this condition could result in loss of continued safe flight and landing of the airplane.

In the NPRM, the FAA proposed to require installing placards on the left-hand inboard edge of the TACS to enhance visibility of TACS movement during night operations and revising the existing AFM for your airplane to include instructions for pre-flight checks of the ATLAS system before taxi. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from three commenters. Two of the commenters were individuals who supported the NPRM. The third commenter was Tamarack. The following presents the comments received on the NPRM from Tamarack and the FAA's response to each comment.

Request To Clarify What Prompted the NPRM

Tamarack requested that the FAA correct the SUMMARY and paragraph (e), "Unsafe Condition," which state that the NPRM was prompted by a report of an unannounced failure of the ATLAS system. Tamarack commented that this statement is not accurate because even though Tamarack reported the design deficiency to the FAA under 14 CFR 21.3, "Reporting of failures, malfunctions, and defects," there had not been any actual failures of the ATLAS system in the fleet. Tamarack stated that the "Background" section of the NPRM more accurately explains that, while accomplishing a reliability improvement program, Tamarack discovered the potential for a failure of the ATLAS system in which a loss of load alleviation would be unannounced.

The FAA agrees to correct the language identified by the commenter and has revised the SUMMARY and paragraph (e) of this AD accordingly.

Request To Revise "Proposed AD Requirements in This NPRM" Section

Tamarack requested that the FAA revise the "Proposed AD Requirements in This NPRM" section of the NPRM to specify who can accomplish the required actions. Tamarack stated that it is unclear whether a pilot can install the

placards on the left-hand inboard edge of the TACS or whether the placards must be installed by a certificated airframe and powerplant (A&P) mechanic.

Paragraph (g) of this AD only allows a pilot to do the revision to the AFM required by paragraph (g)(2) of this AD and does not allow a pilot to do the installation of placards required by paragraph (g)(1) of this AD. An FAA-certificated A&P mechanic or repair station must install the placards on the left-hand inboard edge of the TACS. The FAA has not revised the “Proposed AD Requirements in This NPRM” section as requested by the commenter because that section of the NPRM is not carried over into this final rule.

Request To Revise “FAA’s Determination” Section of the NPRM

Tamarack requested that the FAA revise the “FAA’s Determination” section of the NPRM, which states that the FAA has determined that the unsafe condition is likely to exist or develop on other products of the same type design. Tamarack stated that the probability of the unsafe condition is “remote” and not “likely” and therefore using “likely” misrepresents the probability of the identified unsafe condition occurring in the fleet.

The FAA disagrees. The “FAA’s Determination” section of the NPRM correlates to the FAA’s finding under 14 CFR 39.5, which states the conditions that must be present when the FAA issues an AD. If an unsafe condition only exists on one product and is not likely to exist or develop on other products of the same type design, or if there are no other existing products of the same type design, the FAA will accomplish corrective action through means other than an AD. The FAA’s finding under 14 CFR 39.5 is unrelated to the probability of the failure condition described by the commenter.

The FAA did not revise this final rule regarding this issue.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for the change described previously, this AD is adopted as proposed in the NPRM.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Tamarack Aerospace Atlas Service Bulletin SBATLAS–57–06, Issue A, dated April 19, 2023. This material specifies procedures for installing placards on the left-hand inboard edge of the TACS to enhance visibility of TACS movement during night operations.

The FAA also reviewed the following AFM supplements, which contain, among other items, instructions for pre-flight checks of the ATLAS system before taxi. These documents are distinct because they apply to different airplane models.

- Tamarack Aerospace Cessna Citation Model 525, 525–0001 thru –0359, AFM Supplement TAG–1101–0099 CA/DD/M023, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.
- Tamarack Aerospace Cessna Citation Model 525, 525–0360 through –0599, AFM Supplement TAG–1101–1099 CA/DD/M037, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.
- Tamarack Aerospace Cessna Citation Model 525, 525–0600 through –0684 and –0686 through –0701, AFM Supplement TAG–1101–P099 CA/DD/M038, Tamarack Active Technology Load Alleviation System (Atlas)

Winglets, Issue D, dated September 20, 2023.

- Tamarack Aerospace Cessna Citation Model 525, 525–0685 and –0800 and on, AFM Supplement TAG–1101–M099 CA/DD/M088, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, September 20, 2023.

- Tamarack Aerospace Cessna Citation Model 525A, 525A–0001 thru –0299, AFM Supplement TAG–1102–0099 CAS/AFM0003, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.

- Tamarack Aerospace Cessna Citation Model 525A, 525A–0300 and on, AFM Supplement TAG–1102–P099 CAS/AFM0004, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.

- Tamarack Aerospace Cessna Citation Jet Model 525B, 525B–0001 thru 525B–0056 and 525B–0058 thru 525B–0450, AFM Supplement TAG–1103–0099 CAS/AFM0001, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.

- Tamarack Aerospace Cessna Citation Jet Model 525B, 525B–0057 and 525B–0451 and ON, AFM Supplement TAG–1103–P099 CAS/AFM0002, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, September 20, 2023.

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

Costs of Compliance

The FAA estimates that this AD affects 148 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install placards	0.5 work-hour × \$85 per hour = \$42.50	\$20	\$62.50	\$9,250
Revise AFM	1 work-hour × \$85 per hour = \$85	0	85	12,580

Authority for This Rulemaking

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

detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil

aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or

develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–15–09 Textron Aviation Inc. (Type Certificate Previously Held by Cessna Aircraft Company): Amendment 39–22800; Docket No. FAA–2024–0470; Project Identifier AD–2023–00694–A.

(a) Effective Date

This airworthiness directive (AD) is effective October 22, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) Model 525, 525A, and 525B airplanes, all serial numbers (S/Ns), certificated in any category, with Tamarack active technology load alleviation system (ATLAS) winglets installed in accordance with Supplemental Type Certificate No. SA03842NY.

(d) Subject

Joint Aircraft System Component (JASC) Code 2770, Gust Lock/Damper System

(e) Unsafe Condition

This AD was prompted by a report of the potential for a failure of the ATLAS system in which a loss of load alleviation would be un-annunciated. The FAA is issuing this AD to address un-annunciated loss of load alleviation which, if not addressed, could lead to the flight crew flying the airplane into conditions that exceed the limit load, as well as fatigue cracking in the airplane's primary

structure. This could result in loss of continued safe flight and landing of the airplane.

(f) Compliance

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

(g) Required Actions

Within 60 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first, do the actions required by paragraphs (g)(1) and (2) of this AD.

(1) Install placards on the left-hand Tamarack active camber surface (TACS) in accordance with steps 1 through 3 of the Accomplishment Instructions in Tamarack Aerospace Atlas Service Bulletin SBATLAS–57–06, Issue A, dated April 19, 2023.

(2) Revise the Normal Procedures section of the existing airplane flight manual (AFM) for your airplane by adding the information in Figure 1 to paragraph (g)(2) of this AD under “Before Taxi” or by incorporating the AFM supplement applicable to your airplane identified in Figure 2 to paragraph (g)(2) of this AD. Using a different document with information identical to this information under “Before Taxi” in the AFM for your airplane is acceptable for compliance with the requirements of this paragraph. The owner/operator (pilot) holding at least a private pilot certificate may revise the existing AFM for your airplane and must enter compliance with the applicable paragraph of this AD into the airplane maintenance records in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

FIGURE 1 TO PARAGRAPH (g)(2)—ATLAS CHECK PROCEDURE

Before Taxi

WARNING

The TACS should move rapidly and forcefully trailing edge up and return to the neutral position when the ATLAS first receives power. Be sure that all personnel and equipment are clear before moving switch to the ON position.

ATLAS System CHECK
(Test that the ATLAS is working properly.)

- a. In poor light or dark conditions, turn on left side reading light.
- b. In poor light or dark conditions, turn on Wing Inspection Light.
- c. ATLAS INOP Button—Press 3 times within 3 seconds. ATLAS INOP Button light will flash 3 times when system goes through BIT (Built In Test).

WARNING

The TACS should move rapidly and forcefully trailing edge up and return to the neutral position when running the BIT function. Be sure that all personnel and equipment are clear before pressing.

- d. TACS CHECK MOVEMENT
Both TACS should rapidly move up and return to the neutral position.
 - i. **If the TACS do not move** after completing step c., this may indicate that ATLAS is not functioning normally.
 - ii. Refer to Abnormal Procedure ATLAS INOPERATIVE ON THE GROUND (TACS DO NOT MOVE IN BIT).
- e. Wait approximately 10 seconds.
- f. ATLAS INOP Button light CHECK OFF
- g. If left side reading light is illuminated, turn off at pilot's discretion.
- h. If Wing Inspection Light is illuminated, turn off at pilot's discretion.

NOTE

If annunciator remains illuminated, or if the TACS do not move, a fault has been identified in the system. In either case refer to Abnormal Procedures ATLAS INOPERATIVE ON THE GROUND.

FIGURE 2 TO PARAGRAPH (g)(2)—TAMARACK ATLAS AFM SUPPLEMENTS

Model and S/N	Tamarack ATLAS AFM supplement
Model 525, S/Ns 525–0001 through 525–0359 inclusive	Paragraph 3A, ATLAS System, under “Before Taxiing” in the Normal Procedures section of Cessna Citation Model 525, 525–0001 thru –0359, AFM Supplement TAG–1101–0099 CA/DD/M023, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.
Model 525, S/Ns 525–0360 through 525–0599 inclusive	Paragraph 3A, ATLAS System, under “Before Taxi” in the Normal Procedures section of Cessna Citation Model 525, 525–0360 thru –0599, AFM Supplement TAG–1101–1099 CA/DD/M037, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.
Model 525, S/Ns 525–0600 through 525–0684 inclusive and S/Ns 525–0686 through 525–0701 inclusive.	Paragraph 1A, ATLAS System, under “Before Taxi” in the Normal Procedures section of Cessna Citation Model 525, 525–0600 through –0684 and –0686 through –0701, AFM Supplement TAG–1101–P099 CA/DD/M038, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.
Model 525, S/N 525–0685 and S/Ns 525–0800 and larger	Paragraph 9A, ATLAS System, under “Before Taxi” in the Normal Procedures section of Cessna Citation Model 525, 525–0685 and –0800 and on, AFM Supplement TAG–1101–M099 CA/DD/M088, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.
Model 525A, S/Ns 525A–0001 through 525–0299 inclusive	Paragraph 3A, ATLAS System, under “Before Taxi” in the Normal Procedures section of Cessna Citation Model 525A, 525A–0001 thru –0299, AFM Supplement TAG–1102–0099 CAS/AFM0003, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, dated September 20, 2023.
Model 525A, S/Ns 525A–0300 and larger	Paragraph 1A, ATLAS System, under “Before Taxi” in the Normal Procedures section of Cessna Citation Model 525A, 525A–0300 and on, AFM Supplement TAG–1102–P099 CAS/AFM0004, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, dated September 20, 2023.
Model 525B, S/Ns 525B–0001 through 525B–0056 inclusive and S/Ns 525B–0058 through 525B–0450 inclusive.	Paragraph 1A, ATLAS System, under “Before Taxi” in the Normal Procedures section of Cessna CitationJet Model 525B, 525B–0001 thru 525B–0056 and 525B–0058 thru 525B–0450, AFM Supplement TAG–1103–0099 CAS/AFM0001, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, dated September 20, 2023.
Model 525B, S/N 525B–0057 and S/Ns 525B–0451 and larger	Paragraph 9A, ATLAS System, under “Before Taxi” in the Normal Procedures section of Cessna CitationJet Model 525B, 525B–0057 and 525B–0451 and ON, AFM Supplement TAG–1103–P099 CAS/AFM0002, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, West Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the West Certification Branch, send it to the attention of the person identified in paragraph (i) of this AD and email it to 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

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

(i) Related Information

For more information about this AD, contact Anthony Caldejon, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (206) 231–3534; email: anthony.v.caldejon@faa.gov.

(j) Material Incorporated by Reference

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

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

(i) Tamarack Aerospace Atlas Service Bulletin SBATLAS–57–06, Issue A, dated April 19, 2023.

(ii) Tamarack Aerospace Cessna Citation Model 525, 525–0001 thru –0359, Airplane Flight Manual (AFM) Supplement TAG–1101–0099 CA/DD/M023, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.

(iii) Tamarack Aerospace Cessna Citation Model 525, 525–0360 thru –0599, AFM Supplement TAG–1101–1099 CA/DD/M037, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, dated September 20, 2023.

(iv) Tamarack Aerospace Cessna Citation Model 525, 525–0600 through –0684 and –0686 through –0701, AFM Supplement TAG–1101–P099 CA/DD/M038, Tamarack Active Technology Load Alleviation System

(Atlas) Winglets, Issue D, dated September 20, 2023.

(v) Tamarack Aerospace Cessna Citation Model 525, 525–0685 and –0800 and on, AFM Supplement TAG–1101–M099 CA/DD/M088, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, September 20, 2023.

(vi) Tamarack Aerospace Cessna Citation Model 525A, 525A–0001 thru –0299, AFM Supplement TAG–1102–0099 CAS/AFM0003, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.

(vii) Tamarack Aerospace Cessna Citation Model 525A, 525A–0300 and on, AFM Supplement TAG–1102–P099 CAS/AFM0004, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.

(viii) Tamarack Aerospace Cessna CitationJet Model 525B, 525B–0001 thru 525B–0056 and 525B–0058 thru 525B–0450, AFM Supplement TAG–1103–0099 CAS/AFM0001, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue C, September 20, 2023.

(ix) Tamarack Aerospace Cessna CitationJet Model 525B, 525B-0057 and 525B-0451 and ON, AFM Supplement TAG-1103-P099 CAS/AFM0002, Tamarack Active Technology Load Alleviation System (Atlas) Winglets, Issue D, September 20, 2023.

(3) For Tamarack material identified in this AD, contact Tamarack Aerospace Group, Inc., 2021 Industrial Drive, Sandpoint, ID 83864; phone: (208) 597-4568; website: tamarackaero.com/customer-support.

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

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

Issued on September 10, 2024.

Steven W. Thompson,

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

[FR Doc. 2024-21112 Filed 9-16-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2024-N-4084]

Medical Devices; Immunology and Microbiology Devices; Classification of the Quantitative Viral Nucleic Acid Test for Transplant Patient Management

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the quantitative viral nucleic acid test for transplant patient management into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the quantitative viral nucleic acid test for transplant patient management's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective September 17, 2024. The classification was applicable on July 30, 2020.

FOR FURTHER INFORMATION CONTACT:

Silke Schlottmann, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3258, Silver Spring, MD 20993-0002, 301-796-9551, Silke.Schlottmann@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the quantitative viral nucleic acid test for transplant patient management as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as “postamendments devices” because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through “De Novo” classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying

the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining “substantial equivalence”). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

On March 2, 2020, FDA received Roche Molecular Systems, Inc.'s request for De Novo classification of the cobas EBV. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on July 30, 2020, FDA issued an order to the requester classifying the device into class II. In

this final order, FDA is codifying the classification of the device by adding 21 CFR 866.3183.¹ We have named the generic type of device quantitative viral nucleic acid test for transplant patient management, and it is identified as a device intended for prescription use in the detection of viral pathogens by measurement of viral deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) using specified specimen processing, amplification, and detection instrumentation. The test is intended for use as an aid in the management of transplant patients with active viral infection or at risk for developing viral infections. The test results are intended to be interpreted by qualified healthcare professionals in conjunction with other relevant clinical and laboratory findings.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—QUANTITATIVE VIRAL NUCLEIC ACID TEST FOR TRANSPLANT PATIENT MANAGEMENT RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Risk of false results	Certain warnings, limitations, results interpretation information, and explanation of procedures in labeling; and Certain device descriptions and specifications, analytical studies, clinical studies, and risk analysis in design verification and validation.
Failure to correctly interpret test results	Certain warnings, limitations, results interpretation information, and explanation of procedures in labeling.
Failure to correctly operate the device	Certain warnings, limitations, results interpretation information, and explanation of procedures in labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR

part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

- 1. The authority citation for part 866 continues to read as follows:
Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.
- 2. Add § 866.3183 to subpart D to read as follows:
§ 866.3183 Quantitative viral nucleic acid test for transplant patient management.
(a) *Identification.* A quantitative viral nucleic acid test for transplant patient

management is identified as a device intended for prescription use in the detection of viral pathogens by measurement of viral DNA or RNA using specified specimen processing, amplification, and detection instrumentation. The test is intended for use as an aid in the management of transplant patients with active viral infection or at risk for developing viral infections. The test results are intended to be interpreted by qualified healthcare professionals in conjunction with other relevant clinical and laboratory findings.

- (b) *Classification.* Class II (special controls). The special controls for this device are:
 - (1) The labeling required under § 809.10(b) of this chapter must include:
 - (i) A prominent statement that the device is not intended for use as a donor screening test for the presence of viral nucleic acid in blood or blood products.
 - (ii) Limitations which must be updated to reflect current clinical practice. These limitations must include, but are not limited to, statements that indicate:
 - (A) Test results are to be interpreted by qualified licensed healthcare professionals in conjunction with clinical signs and symptoms and other relevant laboratory results; and
 - (B) Negative test results do not preclude viral infection or tissue invasive viral disease and that test results must not be the sole basis for patient management decisions.

¹ FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

(iii) A detailed explanation of the interpretation of results and acceptance criteria must be provided and include specific warnings regarding the potential for variability in viral load measurement when samples are measured by different devices. Warnings must include the following statement, where applicable: “Due to the potential for variability in [analyte] measurements across different [analyte] assays, it is recommended that the same device be used for the quantitation of [analyte] when managing individual patients.”

(iv) A detailed explanation of the principles of operation and procedures for assay performance.

(2) Design verification and validation must include the following:

(i) Detailed documentation of the device description, including all parts that make up the device, ancillary reagents required for use with the assay but not provided, an explanation of the methodology, design of the primer/probe sequences, rationale for the selected gene target, and specifications for amplicon size, guanine-cytosine content, and degree of nucleic acid sequence conservation. The design and nature of all primary, secondary and tertiary quantitation standards used for calibration must also be described.

(ii) A detailed description of the impact of any software, including software applications and hardware-based devices that incorporate software, on the device's functions;

(iii) Documentation and characterization (e.g., determination of the identity, supplier, purity, and stability) of all critical reagents and protocols for maintaining product integrity throughout its labeled shelf-life.

(iv) Stability data for reagents provided with the device and indicated specimen types, in addition to the basis for the stability acceptance criteria at all time points chosen across the spectrum of the device's indicated life cycle, which must include a time point at the end of shelf life.

(v) All stability protocols, including acceptance criteria.

(vi) Final lot release criteria along with documentation of an appropriate justification that lots released at the extremes of the specifications will meet the claimed analytical and clinical performance characteristics as well as the stability claims.

(vii) Risk analysis and documentation demonstrating how risk control measures are implemented to address device system hazards, such as Failure Mode Effects Analysis and/or Hazard Analysis. This documentation must

include a detailed description of a protocol (including all procedures and methods) for the continuous monitoring, identification, and handling of genetic mutations and/or novel viral stains (e.g., regular review of published literature and annual in silico analysis of target sequences to detect possible primer or probe mismatches). All results of this protocol, including any findings, must be documented.

(viii) Analytical performance testing that includes:

(A) Detailed documentation of the following analytical performance studies: limit of detection, upper and lower limits of quantitation, inclusivity, precision, reproducibility, interference, cross reactivity, carry-over, quality control, specimen stability studies, and additional studies as applicable to specimen type and intended use for the device;

(B) Identification of the viral strains selected for use in analytical studies, which must be representative of clinically relevant circulating strains;

(C) Inclusivity study results obtained with a variety of viral genotypes as applicable to the specific assay target and supplemented by in silico analysis;

(D) Reproducibility studies that include the testing of three independent production lots;

(E) Documentation of calibration to a reference standard that FDA has determined is appropriate for the quantification of viral DNA or RNA (e.g., a recognized consensus standard); and

(F) Documentation of traceability performed each time a new lot of the standardized reference material to which the device is traceable is released, or when the field transitions to a new standardized reference material.

(ix) Clinical performance testing that includes:

(A) Detailed documentation from either a method comparison study with a comparator that FDA has determined is appropriate, or results from a prospective clinical study demonstrating clinical validity of the device;

(B) Data from patient samples, with an acceptable number of the virus-positive samples containing an analyte concentration near the lower limit of quantitation and any clinically relevant decision points. If an acceptable number of virus-positive samples containing an analyte concentration near the lower limit of quantitation and any clinically relevant decision cannot be obtained, contrived samples may be used to supplement sample numbers when appropriate, as determined by FDA;

(C) The method comparison study must include predefined maximum acceptable differences between the test and comparator method across all primary outcome measures in the clinical study protocol; and

(D) The final release test results for each lot used in the clinical study.

Dated: September 12, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21086 Filed 9–16–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 510, 525, 526, 536, 542, 544, 546, 547, 548, 549, 550, 551, 552, 553, 555, 558, 560, 562, 569, 570, 576, 578, 579, 582, 583, 584, 585, 587, 588, 589, 590, 591, 594, 598, and 599

Updating Provisions Related to Blocking and Other Actions Related to Specific Property or Interests in Property

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is adopting a final rule to clarify OFAC's process for issuing certain orders that block or identify as blocked specific property or interests in property, or that impose other prohibitions less than full blocking with respect to specific property or interests in property. OFAC is adding information about these orders in regulatory notes in 35 of OFAC's sanctions regulations.

DATES: This rule is effective September 17, 2024.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: <https://ofac.treasury.gov>.

Background

In this rule, OFAC is updating 35 parts of 31 CFR chapter V to clarify OFAC's processes when it issues certain

orders that block or identify as blocked specific property or interests in property, or that impose other non-blocking prohibitions with respect to specific property or interests in property.

International Emergency Economic Powers Act

The 35 parts of 31 CFR chapter V that are the subject of this rule implement OFAC's authority to block the property and interests in property of persons pursuant to, among other authorities, the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (IEEPA).

IEEPA includes authority to investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transaction involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States. 50 U.S.C. 1702(a)(1)(B). Other statutes provide similar authority.

OFAC's actions rely on the President's delegation of those authorities under one or more Executive orders. Such orders typically authorize the Secretary of the Treasury to designate persons who meet specified criteria, and they provide that all property and interests in property within U.S. jurisdiction of such persons is blocked. These orders also authorize the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions and to employ all powers granted to the President under IEEPA or other applicable statutory authorities as may be necessary to carry out their purpose, and they provide that blocking prohibitions apply except to the extent provided in regulations, orders, directives, or licenses OFAC may issue. *See, e.g.,* section 1(d) of Executive Order (E.O.) 14024.

Actions With Respect to Specific Property or Interests in Property

The most common way OFAC exercises its authority is by designating a person and placing that person on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). Once designated, all property and interests in property subject to U.S. jurisdiction of the designated person are blocked, and U.S. persons are generally prohibited from engaging in transactions

involving any property or interest in property of the designated person. However, in certain cases, OFAC may exercise its authority in narrower ways. These actions include issuing orders or directives that impose prohibitions less than fully blocking the entirety of a person's property and interests in property as circumstances require. Such tailored actions are based on a combination of OFAC's authority to block all property of a designated person and its authority to narrow the scope of such broad prohibitions through orders, directives, or licenses.

This rule identifies three forms that such actions by OFAC may take: (1) identifying property or interests in property as blocked pursuant to OFAC's authority due to an interest of an already blocked person, including where such interest may not be apparent to the public; (2) blocking specific property or interests in property of a person who is not already blocked but whom OFAC is investigating for potential designation; and (3) blocking or imposing other prohibitions with respect to a person's specific property or interests in property less than full blocking sanctions.

First, OFAC may act to aid relevant parties by identifying the property or interests in property of already blocked persons, particularly in cases in which OFAC has access to information supporting its determination that a blocked person has an interest in specific property. In such cases, OFAC may identify specific property in which OFAC determines a blocked person has an interest and issue an order to financial institutions or other persons in possession or control of such property to block such property. OFAC may also exercise its blocking authorities in this manner upon review of financial transaction information received from U.S. financial institutions following OFAC's requirements that such financial institutions provide reports about accounts or transactions that meet specified criteria. *See* note 1 to 31 CFR 501.602.

Second, OFAC may identify property or interests in property of a person who is not blocked, but whom OFAC is investigating for potential designation. To ensure that this property or interest in property is not transferred before OFAC designates the person, OFAC may issue an order to financial institutions or other persons in possession or control of such property or interest in property to block it pending investigation.

Third, in certain other cases, OFAC may block or impose other prohibitions with respect to specific property or interests in property less than full

blocking sanctions. For example, OFAC may consider designating a person but determine U.S. national security or foreign policy interests are better served by prohibitions that may be narrower than blocking the entirety of the person's property and interests in property. In such cases, OFAC would determine that a person meets the criteria for designation but would take action less than blocking the entirety of a person's property and interests in property. This action may take various forms, including an order to the financial institutions or other persons in possession or control of the specific property or interests in property or a directive imposing non-blocking restrictions. For example, in 2014 OFAC issued directives pursuant to sec. 1(b) of Executive Order 13662 that prohibited certain dealings in debt and equity of persons operating in those sectors of the Russian Federation economy identified by the Secretary of the Treasury pursuant to sec. 1(a)(i) of Executive Order 13662.

Provision of Notice

Persons affected by any type of OFAC prohibition should have an opportunity to understand the nature of OFAC's action and its impact on their property or interests in property. The form of notice may differ depending on the type of action OFAC takes or order it issues and the specific facts of an action.

OFAC may publish notice of its action in the **Federal Register**, which provides the public with constructive notice of the action. This is the form of notice OFAC uses for designation actions because it ensures that anyone who may come into contact with a designated person or their property or interests in property is aware of the designation.

When OFAC takes more tailored action with respect to specific property or interests in property, the public may not always require notice of the action through publication in the **Federal Register**, and it may be more appropriate to provide actual notice specifically to a person affected by the prohibition. OFAC may do so by providing written notice of OFAC's order to one or more persons OFAC assesses to have an interest in the property based on available information. OFAC may provide such notice directly to such affected persons or indirectly through financial institutions or other transaction intermediaries, who would be required to notify the affected persons with whom the recipient maintains direct commercial relationships. In many cases, requiring a transaction intermediary to disclose a blocking order may be the most efficient

and effective means of providing notice because a transaction intermediary maintains direct commercial relationships through which affected persons may inquire about the status of their funds.¹

Current Regulatory Action

This rule amends notes to the blocking provisions in subpart B of OFAC's regulations in 35 parts of 31 CFR chapter V (the "subject parts"). The blocking provisions are in § 510.201 in the following parts of 31 CFR: 510, 525, 526, 536, 542, 544, 546, 547, 548, 549, 550, 551, 552, 553, 555, 558, 562, 569, 570, 576, 578, 579, 582, 583, 584, 585, 587, 588, 589, 590, 591, 594, and 599. In part 536, in addition to amending § 536.201, OFAC is amending notes to § 536.312, the definition of *pecially designated narcotics trafficker*, because that definition discusses blocked property and blocking orders. In part 560, the blocking provisions are in § 560.211. In part 598, the blocking provisions are in § 598.202, and in addition to amending that section, OFAC is amending § 598.314, the definition of *pecially designated narcotics trafficker*, because that definition discusses blocked property and blocking orders.

Specifically, this rule adds a note to the subject parts describing the three types of actions OFAC may take with respect to specific property or interests in property, the forms of notice that OFAC may use, and how affected persons can contact OFAC with inquiries about these actions.

Additionally, this rule amends an existing note to the subject parts regarding OFAC's blocking of property and interests in property pending investigation. OFAC is amending the note to make clear that the procedure of publishing the names of persons blocked during the pendency of an investigation in the **Federal Register** will not necessarily apply when OFAC takes an action to block specific property or interests in property pending investigation.

Finally, OFAC is updating the note in the subject parts that explains the procedures for seeking release of blocked property or administrative reconsideration of OFAC actions to add information about additional unblocking procedures available to blocked or otherwise affected persons. In certain parts, OFAC is making other

technical or other conforming updates to the notes.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), as amended, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Parts 510, 525, 526, 536, 542, 544, 546, 547, 548, 549, 550, 551, 552, 553, 555, 558, 560, 562, 569, 570, 576, 578, 579, 582, 583, 584, 585, 587, 588, 589, 590, 591, 594, 598, and 599

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Foreign trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Services.

For the reasons set forth in the preamble, OFAC amends 31 CFR chapter V as follows:

PART 510—NORTH KOREA SANCTIONS REGULATIONS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c, 9201–9255; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); E.O. 13466, 73 FR 36787, 3 CFR, 2008 Comp., p. 195; E.O. 13551, 75 FR 53837, 3 CFR, 2010 Comp., p. 242; E.O. 13570, 76 FR 22291, 3 CFR, 2011 Comp., p. 233; E.O. 13687, 80 FR 819, 3 CFR, 2015 Comp., p. 259; E.O. 13722, 81 FR 14943, 3 CFR, 2016 Comp., p. 446; E.O. 13810, 82 FR 44705, 3 CFR, 2017 Comp., p. 379.

Subpart B—Prohibitions

■ 2. Amend § 510.201 as follows:

■ a. In note 5 to paragraph (a), in the second sentence:

■ i. Remove "The names" and add in its place "Except as described in note 6 to this paragraph (a), the names"; and

■ ii. Remove the word "also."

■ b. Redesignate note 6 to paragraph (a) as note 7 to paragraph (a).

■ c. Add new note 6 to paragraph (a).

■ d. Revise newly designated note 7 to paragraph (a).

The addition and revision read as follows:

§ 510.201 Prohibited transactions involving blocked property.

(a) * * *

Note 6 to paragraph (a). In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 7 to paragraph (a). Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this paragraph (a).

* * * * *

PART 525—BURMA SANCTIONS REGULATIONS

■ 3. The authority citation for part 525 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 14014, 86 FR 9429, 3 CFR, 2021 Comp., p. 514.

Subpart B—Prohibitions

■ 4. Amend § 525.201 as follows:

■ a. In note 2 to § 525.201, in the second sentence:

¹ OFAC's authority to "regulate" transactions includes the authority to require a participant in a transaction who is subject to U.S. jurisdiction to provide notice to its direct commercial counterparts when the transaction is blocked. 50 U.S.C. 1702(a)(1)(B).

- i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
- ii. Remove the word “also.”
- b. Redesignate note 3 to § 525.201 as note 4 to § 525.201.
- c. Add new note 3 to § 525.201.
- d. Revise newly designated note 4 to § 525.201.

The addition and revision read as follows:

§ 525.201 Prohibited transactions.

* * * * *

Note 3 to § 525.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 525.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to this section.

PART 526—HOSTAGES AND WRONGFUL DETENTION SANCTIONS REGULATIONS

- 5. The authority citation for part 526 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 1741 *et seq.*; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 14078, 87 FR 43389, 3 CFR, 2022 Comp., p. 407.

Subpart B—Prohibitions

- 6. Amend § 526.201 as follows:
 - a. In note 2 to § 526.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove the word “also.”
 - b. Redesignate note 3 to § 526.201 as note 4 to § 526.201.

- c. Add new note 3 to § 526.201.
- d. Revise newly designated note 4 to § 526.201.

The additions and revision read as follows:

§ 526.201 Prohibited transactions.

* * * * *

Note 3 to § 526.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 526.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

- 7. The authority citation for part 536 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart B—Prohibitions

- 8. Amend § 536.201 by revising note 2 to the section to read as follows:

§ 536.201 Prohibited transactions.

* * * * *

Note 2 to § 536.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

Subpart C—Definitions

- 9. Amend § 536.312 as follows:
 - a. In note 2 to § 536.312, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove the word “also.”
 - b. Redesignate note 3 to § 536.312 as note 4 to § 536.312.
 - c. Add new note 3 to § 536.312.
 - d. Revise newly designated note 4 to § 536.312.

The addition and revision read as follows:

§ 536.312 Specially designated narcotics trafficker.

* * * * *

Note 3 to § 536.312. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a specially designated narcotics trafficker; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 536.312. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 542—SYRIAN SANCTIONS REGULATIONS

- 10. The authority citation for part 542 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2332d; 22 U.S.C. 287c; 22 U.S.C. 8791–8793; 22 U.S.C. 9528; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 108–175 (22 U.S.C. 2151 note); Pub. L. 116–92, Div. F, Title LXXIV, 133 Stat. 2291 (22 U.S.C. 8791 note); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13399, 71 FR 25059, 3 CFR, 2006 Comp., p. 218; E.O. 13460, 73 FR 8991, 3 CFR 2008 Comp., p. 181; E.O. 13572, 76 FR 24787, 3 CFR 2011 Comp., p. 236; E.O. 13573, 76 FR

29143, 3 CFR 2011 Comp., p. 241; E.O. 13582, 76 FR 52209, 3 CFR 2011 Comp., p. 264; E.O. 13606, 77 FR 24571, 3 CFR 2012 Comp., p. 243; E.O. 13608, 77 FR 26409, 3 CFR, 2012 Comp., p. 252.

Subpart B—Prohibitions

- 11. Amend § 542.201 as follows:
 - a. Redesignate note 3 to § 542.201 as note 4 to § 542.201.
 - b. Add new note 3 to § 542.201.
 - c. Revise newly designated note 4 to § 542.201.

The addition and revision read as follows:

§ 542.201 Prohibited transactions involving blocked property.

* * * * *

Note 3 to § 542.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 542.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 544—WEAPONS OF MASS DESTRUCTION PROLIFERATORS SANCTIONS REGULATIONS

- 12. The authority citation for part 544 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170.

Subpart B—Prohibitions

- 13. Amend § 544.201 as follows:
 - a. In note 2 to paragraph (a) of § 544.201, in the second sentence:

- i. Remove “The names” and add in its place “Except as described in note 3 to this paragraph (a), the names”; and
- ii. Remove the word “also.”
- b. Redesignate note 3 to paragraph (a) of § 544.201 as note 4 to paragraph (a).
- c. Add new note 3 to paragraph (a).
- d. Revise newly designated note 4 to paragraph (a).

The addition and revision read as follows:

§ 544.201 Prohibited transactions involving blocked property.

(a) * * *

Note 3 to paragraph (a). In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to paragraph (a). Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this paragraph (a).

* * * * *

PART 546—SUDAN STABILIZATION SANCTIONS REGULATIONS

- 14. The authority citation for part 546 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13400, 71 FR 25483, 3 CFR, 2006 Comp., p. 220; E.O. 14098, 88 FR 29529.

- 15. Amend § 546.201 as follows:

- a. In note 2 to § 546.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove the word “also.”
- b. Redesignate note 3 to § 546.201 as note 4 to § 546.201.

- c. Add new note 3 to § 546.201.
- d. Revise newly designated note 4 to § 546.201.

The addition and revision read as follows:

§ 546.201 Prohibited transactions involving blocked property.

* * * * *

Note 3 to § 546.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 546.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 547—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

- 16. The authority citation for part 547 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13413, 71 FR 64105, 3 CFR, 2006 Comp., p. 247; E.O. 13671, 79 FR 39949, 3 CFR, 2015 Comp., p. 280.

Subpart B—Prohibitions

- 17. Amend § 547.201 as follows:
 - a. In note 2 to paragraph (a), in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this paragraph (a), the names”; and
 - ii. Remove the word “also.”
 - b. Redesignate note 3 to paragraph (a) as note 4 to paragraph (a).
 - c. Add new note 3 to paragraph (a).
 - d. Revise newly designated note 4 to paragraph (a).

The addition and revision read as follows:

§ 547.201 Prohibited transactions involving blocked property.

(a) * * *

Note 3 to paragraph (a). In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to paragraph (a). Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this paragraph (a).

* * * * *

PART 548—BELARUS SANCTIONS REGULATIONS

■ 18. The authority citation for part 548 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13405, 71 FR 35485, 3 CFR, 2006 Comp., p. 231; E.O. 14038, 86 FR 43905, 3 CFR, 2021 Comp., p. 626.

Subpart B—Prohibitions

- 19. Amend § 548.201 as follows:
- a. In note 2 to § 548.201, in the second sentence:
- i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
- ii. Remove the word “also.”
- b. Redesignate note 3 to § 548.201 as note 4 to § 548.201.
- c. Add new note 3 to § 548.201.
- d. Revise newly designated note 4 to § 548.201.

The addition and revision read as follows:

§ 548.201 Prohibited transactions involving blocked property.

* * * * *

Note 3 to § 548.201. In certain cases, OFAC may issue an order to: identify as blocked

specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 548.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 549—LEBANON SANCTIONS REGULATIONS

■ 20. The authority citation for part 549 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13441, 72 FR 43499, 3 CFR, 2008 Comp., p. 232.

Subpart B—Prohibitions

- 21. Amend § 549.201 as follows:
- a. In note 2 to paragraph (a) of § 549.201, in the second sentence:
- i. Remove “The names” and add in its place “Except as described in note 3 to this paragraph (a), the names”; and
- ii. Remove “also”.
- b. Redesignate note 3 to paragraph (a) of § 549.201 as note 4 to paragraph (a).
- c. Add new note 3 to paragraph (a).
- d. Revise newly redesignated note 4 to paragraph (a).

The addition and revision read as follows:

§ 549.201 Prohibited transactions involving blocked property.

(a) * * *

Note 3 to paragraph (a). In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less

than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to paragraph (a). Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this paragraph (a).

* * * * *

PART 550—ETHIOPIA SANCTIONS REGULATIONS

■ 22. The authority citation for part 550 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 14046, 86 FR 52389, 3 CFR, 2022 Comp., p. 549.

Subpart B—Prohibitions

- 23. Amend § 550.201 as follows:
- a. In note 2 to § 550.201, in the second sentence:
- i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
- ii. Remove “also”.
- b. Revise notes 3 and 5 to § 550.201. The addition and revision read as follows:

§ 550.201 Prohibited transactions.

* * * * *

Note 3 to § 550.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be

directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

* * * * *

Note 5 to § 550.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 551—SOMALIA SANCTIONS REGULATIONS

■ 24. The authority citation for part 551 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13536, 75 FR 19869, 3 CFR, 2010 Comp., p. 203; E.O. 13620, 77 FR 43483, 3 CFR, 2012 Comp., p. 281.

Subpart B—Prohibitions

- 25. Amend § 551.201 as follows:
 - a. In note 2 to § 551.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove “also”.
 - b. Redesignate note 3 to § 551.201 as note 4 to § 551.201.
 - c. Add new note 3 to § 551.201.
 - d. Revise newly redesignated note 4 to § 551.201.

The addition and revision read as follows:

§ 551.201 Prohibited transactions.

* * * * *

Note 3 to § 551.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 551.201. Subpart E of part 501 of this chapter describes the procedures to be

followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 552—YEMEN SANCTIONS REGULATIONS

■ 26. The authority citation for part 552 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13611, 77 FR 29533, 3 CFR, 2012 Comp., p. 260.

Subpart B—Prohibitions

- 27. Amend § 552.201 as follows:
 - a. In note 2 to § 552.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove “also”.
 - b. Redesignate note 3 to § 552.201 as note 4 to § 552.201.
 - c. Add new note 3 to § 552.201.
 - d. Revise newly redesignated note 4 to § 552.201.

The addition and revision read as follows:

§ 552.201 Prohibited transactions.

* * * * *

Note 3 to § 552.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 552.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 553—CENTRAL AFRICAN REPUBLIC SANCTIONS REGULATIONS

■ 28. The authority citation for part 553 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13667, 79 FR 28387, 3 CFR, 2014 Comp., p. 243.

Subpart B—Prohibitions

- 29. Amend § 553.201 as follows:
 - a. In note 2 to § 553.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove “also”.
 - b. Redesignate note 3 to § 553.201 as note 4 to § 553.201.
 - c. Add new note 3 to § 553.201.
 - d. Revise newly redesignated note 4 to § 553.201.

The addition and revision read as follows:

§ 553.201 Prohibited transactions.

* * * * *

Note 3 to § 553.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 553.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 555—MALI SANCTIONS REGULATIONS

■ 30. The authority citation for part 555 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–

1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13882, 84 FR 37055, 3 CFR, 2019 Comp., p. 346.

Subpart B—Prohibitions

- 31. Amend § 555.201 as follows: an
- a. In note 2 to § 555.201, in the second sentence:
- i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
- ii. Remove the word “also.”
- b. Redesignate note 3 to § 555.201 as note 4 to § 555.201.
- c. Add new note 3 § 555.201.
- d. Revise newly designated note 4 to § 555.201.

The addition and revision read as follows:

§ 555.201 Prohibited transactions.

* * * * *

Note 3 to § 555.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 555.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 558—SOUTH SUDAN SANCTIONS REGULATIONS

- 32. The authority citation for part 558 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13664, 79 FR 19283, 3 CFR, 2014 Comp., p. 238.

Subpart B—Prohibitions

- 33. Amend § 558.201 as follows:
- a. In note 2 to § 558.201, in the second sentence:

- i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
- ii. Remove the word “also.”
- b. Redesignate note 3 to § 558.201 as note 4 to § 558.201.
- c. Add new note 3 to § 558.201.
- d. Revise newly designated note 4 to § 558.201.

The addition and revision read as follows:

§ 558.201 Prohibited transactions.

* * * * *

Note 3 to § 558.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 558.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 560—IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS

- 34. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9, 7201–7211, 8501–8551, 8701–8795; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13846, 83 FR 38939, 3 CFR, 2018 Comp., p. 854.

Subpart B—Prohibitions

- 35. Amend § 560.211 as follows:
- a. In note 2 to paragraphs (a) through (c) of § 560.211, in the second sentence:

- i. Remove “The names” and add in its place “Except as described in note 3 to paragraphs (a) through (c) of this section, the names”; and
- ii. Remove the word “also.”
- b. Add notes 3 and 4 to paragraphs (a) through (c).

The additions read as follows:

§ 560.211 Prohibited transactions involving blocked property.

* * * * *

(c) * * *

Note 3 to paragraphs (a) through (c). In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to paragraphs (a) through (c). Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

* * * * *

PART 562—IRANIAN SECTOR AND HUMAN RIGHTS ABUSES SANCTIONS REGULATIONS

- 36. The authority citation for part 562 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 8501–8551; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, 3 CFR, 2010 Comp., p. 253; E.O. 13871, 84 FR 20761, 3 CFR, 2019 Comp., p. 308.

Subpart B—Prohibitions

- 37. Amend § 562.201 as follows:
- a. In note 2 to § 562.201, in the second and third sentences:
- i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and

- ii. Remove “also”.
- b. Redesignate note 3 to § 562.201 as note 4 to § 562.201.
- c. Add new note 3 to § 562.201.
- d. Revise newly redesignated note 4 to § 562.201.

The addition and revision read as follows:

§ 562.201 Prohibited transactions.

* * * * *

Note 3 to § 562.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 562.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 569—SYRIA-RELATED SANCTIONS REGULATIONS

- 38. The authority citation for part 569 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13894, 84 FR 55851, 3 CFR, 2019 Comp., p. 382.

Subpart B—Prohibitions

- 39. Amend § 569.201 as follows:
 - a. In note 2 to § 569.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove the word “also”.
 - b. Redesignate note 3 to § 569.201 as note 6 to § 569.201.
 - c. Add new note 3 to § 569.201.
 - d. Revise newly redesignated note 6 to § 569.201.

The addition and revision read as follows:

§ 569.201 Prohibited transactions.

* * * * *

Note 3 to § 569.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

* * * * *

Note 6 to § 569.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to this section.

PART 570—LIBYAN SANCTIONS REGULATIONS

- 40. The authority citation for part 570 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13566, 76 FR 11315, 3 CFR, 2011 Comp., p. 222; E.O. 13726, 81 FR 23559, 3 CFR, 2016 Comp., p. 454.

- 41. Amend § 570.201 as follows:
 - a. In note 2 to § 570.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove the word “also”.
 - b. Redesignate note 3 to § 570.201 as note 4 to § 570.201.
 - c. Add new note 3 to § 570.201.
 - d. Revise newly designated note 4 to § 570.201.

The addition and revision read as follows:

§ 570.201 Prohibited transactions.

* * * * *

Note 3 to § 570.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific

property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 570.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 576—IRAQ STABILIZATION AND INSURGENCY SANCTIONS REGULATIONS

- 42. The authority citation for part 576 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13303, 68 FR 31931, 3 CFR, 2003 Comp., p. 227; E.O. 13315, 68 FR 52315, 3 CFR, 2003 Comp., p. 252; E.O. 13350, 69 FR 46055, 3 CFR, 2004 Comp., p. 196; E.O. 13364, 69 FR 70177, 3 CFR, 2004 Comp., p. 236; E.O. 13438, 73 FR 39719, 3 CFR, 2007 Comp., p. 224; E.O. 13668, 79 FR 31019, 3 CFR, 2014 Comp., p. 248.

Subpart B—Prohibitions

- 43. Amend § 576.201 as follows:
 - a. In note 2 to paragraph (a) of § 570.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this paragraph (a), the names”; and
 - ii. Remove the word “also”.
 - b. Redesignate note 3 to paragraph (a) of § 570.201 as note 4 to paragraph (a).
 - c. Add new note 3 to paragraph (a).
 - d. Revise newly designated note 4 to paragraph (a).

The addition and revision read as follows:

§ 576.201 Prohibited transactions involving blocked property.

(a) * * *

Note 3 to paragraph (a). In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise

blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202-622-2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to paragraph (a). Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this paragraph (a).

* * * * *

PART 578—CYBER-RELATED SANCTIONS REGULATIONS

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

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); E.O. 13694, 80 FR 18077, 3 CFR 2015 Comp., p. 297; E.O. 13757, 82 FR 1, 3 CFR 2016 Comp., p. 659.

Subpart B—Prohibitions

- 45. Amend § 578.201 as follows:
 - a. In note 2 to § 578.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove the word “also.”
 - b. Redesignate notes 3 and 4 to § 570.201 as notes 4 and 5 to § 578.201, respectively.
 - c. Add new note 3 to § 578.201.
 - d. Revise newly designated note 4 to § 570.201.

The addition and revision read as follows:

§ 578.201 Prohibited transactions.

* * * * *

Note 3 to § 578.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose

other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202-622-2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 578.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

* * * * *

PART 579—FOREIGN INTERFERENCE IN U.S. ELECTIONS SANCTIONS REGULATIONS

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

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13848, 83 FR 46843, 3 CFR, 2018 Comp., p. 869.

Subpart B—Prohibitions

- 47. Amend § 579.201 as follows:
 - a. In note 2 to § 579.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove the word “also.”
 - b. Redesignate note 3 to § 579.201 as note 4 to § 579.201.
 - c. Add new note 3 to § 579.201.
 - d. Revise newly designated note 4 to § 579.201.

The addition and revision read as follows:

§ 579.201 Prohibited transactions.

* * * * *

Note 3 to § 579.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or

by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202-622-2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 579.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this section.

PART 582—NICARAGUA SANCTIONS REGULATIONS

■ 48. The authority citation for part 582 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–335, 132 Stat. 5019 (50 U.S.C. 1701 note); E.O. 13851, 83 FR 61505, 3 CFR, 2018 Comp., p. 884.

Subpart B—Prohibitions

- 49. Amend § 582.201 as follows:
 - a. In note 2 to § 582.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove the word “also.”
 - b. Redesignate note 3 to § 582.201 as note 4 to § 582.201.
 - c. Add new note 3 to § 582.201.
 - Revise newly designated note 4 to § 582.201.

The addition and revision read as follows:

§ 582.201 Prohibited transactions.

* * * * *

Note 3 to § 582.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be

directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 582.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this section.

PART 583—GLOBAL MAGNITSKY SANCTIONS REGULATIONS

■ 50. The authority citation for part 583 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 10101–10103; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 116–145, 134 Stat. 651, as amended (22 U.S.C. 6901 note); Pub. L. 117–78, 135 Stat. 1531 (22 U.S.C. 6901 note); E.O. 13818, 82 FR 60839, 3 CFR, 2017 Comp. p. 399.

Subpart B—Prohibitions

■ 51. Amend § 583.201 as follows:

■ a. In note 2 to § 583.201, in the second sentence:

■ i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and

■ ii. Remove the word “also.”

■ b. Redesignate note 3 to § 583.201 as note 4 to § 583.201.

■ c. Add new note 3 to § 583.201.

■ d. Revise newly designated note 4 to § 583.201.

The addition and revisions read as follows:

§ 583.201 Prohibited transactions.

* * * * *

Note 3 to § 583.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 583.201. Subpart E of part 501 of this chapter describes the procedures to be

followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 584—MAGNITSKY ACT SANCTIONS REGULATIONS

■ 52. The authority citation for part 584 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 112–208, Title IV, 126 Stat. 1502 (22 U.S.C. 5811 note).

Subpart B—Prohibitions

■ 53. Amend § 584.201 as follows:

■ a. In note 2 to paragraph (a), in the second sentence:

■ i. Remove “The names” and add in its place “Except as described in note 3 to this paragraph (a), the names”; and

■ ii. Remove the word “also.”

■ b. Redesignate notes 3 and 4 to paragraph (a) as notes 4 and 5 to paragraph (a), respectively.

■ c. Add new note 3 to paragraph (a).

■ d. Revise newly designated note 4 to paragraph (a).

The additions and revision read as follows:

§ 584.201 Prohibited transactions involving blocked property.

(a) * * *

Note 3 to paragraph (a). In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to paragraph (a). Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property

and interests in property are blocked pursuant to this paragraph (a).

* * * * *

PART 585—HONG KONG-RELATED SANCTIONS REGULATIONS

■ 54. The authority citation for part 585 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13936, 85 FR 43413, 3 CFR, 2020 Comp., p. 399.

Subpart B—Prohibitions

■ 55. Amend § 585.201 as follows:

■ a. In note 2 to § 585.201, in the second sentence:

■ i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and

■ ii. Remove the word “also.”

■ b. Redesignate note 3 to § 585.201 as note 4 to § 585.201.

■ c. Add new note 3 to § 585.201.

■ d. Revise newly designated note 4 to § 585.201.

The addition and revision read as follows:

§ 585.201 Prohibited transactions.

* * * * *

Note 3 to § 585.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 585.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 587—RUSSIAN HARMFUL FOREIGN ACTIVITIES SANCTIONS REGULATIONS

■ 56. The authority citation for part 587 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 14024, 86 FR 20249, 3 CFR, 2021 Comp., p. 542.

■ 57. Amend § 587.201 as follows:

■ a. In note 2 to § 587.201, in the second sentence:

■ i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and

■ ii. Remove the word “also.”

■ b. Redesignate note 3 to § 587.201 as note 4 to § 587.201.

■ c. Add new note 3 to § 587.201.

■ d. Revise newly designated note 4 to § 587.201.

The addition and revision read as follows:

§ 587.201 Prohibited transactions.

* * * * *

Note 3 to § 587.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 587.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

■ 58. The authority citation for part 588 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13219,

66 FR 34777, 3 CFR, 2001 Comp., p. 778; E.O. 13304, 68 FR 32315, 3 CFR, 2004 Comp., p. 229; E.O. 14033, 86 FR 43905, 3 CFR, 2022 Comp., p. 591.

Subpart B—Prohibitions

■ 59. Amend § 588.201 as follows:

■ a. In note 2 to § 588.201, in the second sentence:

■ i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and

■ ii. Remove the word “also.”

■ b. Redesignate note 3 to § 588.201 as note 4 to § 588.201.

■ c. Add new note 3 to § 588.201.

■ d. Revise newly designated note 4 to § 588.201.

The addition and revision read as follows:

§ 588.201 Prohibited transactions.

* * * * *

Note 3 to § 588.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 588.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 589—UKRAINE/RUSSIA-RELATED SANCTIONS REGULATIONS

■ 60. The authority citation for part 589 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 8901–8910, 8921–8930; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); E.O. 13660, 79 FR 13493, 3 CFR, 2014 Comp., p. 226; E.O. 13661, 79 FR 15535, 3 CFR, 2014 Comp., p. 229; E.O. 13662, 79 FR 16169, 3 CFR, 2014

Comp., p. 233; E.O. 13685, 79 FR 77357, 3 CFR, 2014 Comp., p. 313; E.O. 13849, 3 CFR, 2018 Comp., p. 875; E.O. 14065, 87 FR 10293, 3 CFR, 2022 Comp., p. 340.

Subpart B—Prohibitions

■ 61. Amend § 589.201 as follows:

■ a. In note 2 to § 589.201, in the second and third sentences:

■ i. Remove “The names” and add in its place “Except as described in note 4 to this section, the names”; and

■ ii. Remove the word “also.”

■ b. Redesignate notes 4 and 5 to § 589.201 as notes 5 and 6 to § 589.201, respectively.

■ c. Add new note 4 to § 589.201.

■ d. Revise newly designated note 5 to § 589.201.

The additions and revision read as follows:

§ 589.201 Prohibited transactions.

* * * * *

Note 4 to § 589.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 5 to § 589.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

* * * * *

PART 590—TRANSNATIONAL CRIMINAL ORGANIZATIONS SANCTIONS REGULATIONS

■ 62. The authority citation for part 590 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13581, 76 FR 44757, 3 CFR, 2011 Comp., p. 260; E.O. 13863, 84 FR 10255, 3 CFR, 2019 Comp., p. 267.

Subpart B—Prohibitions

- 63. Amend § 590.201 as follows:
 - a. In note 2 to § 590.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove the word “also.”
 - b. Redesignate note 3 to § 590.201 as note 4 to § 590.201.
 - c. Add new note 3 to § 590.201.
 - d. Revise newly designated note 4 to § 590.201.

The addition and revision read as follows:

§ 590.201 Prohibited transactions.

* * * * *

Note 3 to § 590.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 590.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

PART 591—VENEZUELA SANCTIONS REGULATIONS

- 64. The authority citation for part 591 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 113–278, 128 Stat. 3011 (50 U.S.C. 1701 note); E.O. 13692, 80 FR 12747, 3 CFR, 2015 Comp., p. 276; E.O. 13808, 82 FR 41155, 3 CFR, 2017 Comp., p. 377; E.O. 13827, 83 FR 12469, 3 CFR, 2018 Comp., p. 794; E.O. 13835, 83 FR 24001, 3 CFR, 2018 Comp., p. 817; E.O. 13850, 83 FR 55243, 3 CFR, 2018 Comp., p. 881; E.O. 13857, 84 FR 509, 3 CFR, 2019 Comp., p. 251; E.O. 13884, 84 FR 38843, 3 CFR, 2019 Comp., p. 351.

Subpart B—Prohibitions

- 65. Amend § 591.201 as follows:
 - a. In note 2 to § 591.201, in the second sentence:
 - i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
 - ii. Remove “also”.
 - b. Redesignate note 3 to § 591.201 as note 4 to § 591.201.
 - c. Add new note 3 to § 591.201.
 - d. Revise newly designated note 4 to § 591.201.

The addition and revision read as follows:

§ 591.201 Prohibited transactions.

* * * * *

Note 3 to § 591.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC’s Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 591.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one’s status as a person whose property and interests in property are blocked pursuant to this section.

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

- 66. The authority citation for part 594 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 114–102, 129 Stat. 2205, as amended (50 U.S.C. 1701 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); Pub. L. 115–348, 132 Stat. 5055 (50 U.S.C. 1701 note); E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161; E.O. 13372, 70 FR 8499, 3 CFR, 2006 Comp., p. 159; E.O. 13886, 84 FR 48041, 3 CFR, 2019 Comp., p. 356.

Subpart B—Prohibitions

- 67. Amend § 594.201 as follows:
 - a. Remove notes 2 and 3 to paragraph (a).
 - b. Redesignate notes 1 and 2 to § 594.201 as notes 3 and 6 to § 594.201, respectively.
 - c. Add new note 2 to § 594.201.
 - d. Revise newly redesignated note 3 to § 594.201.
 - e. Add notes 4 and 5 to § 594.201.

The addition and revision read as follows:

§ 594.201 Prohibited transactions involving blocked property.

* * * * *

Note 2 to § 594.201: The names of persons whose property and interests in property are blocked pursuant to paragraph (a) of this section are published in the **Federal Register** and incorporated into the Office of Foreign Assets Control’s SDN List with the identifier “[SDGT].” Persons who have been identified by the Office of Foreign Assets Control as officials, agents, or affiliates of the IRGC are identified by a special reference to the “IRGC” at the end of their entries on the SDN List, in addition to the reference to this part. For example, an affiliate of the IRGC whose property and interests in property are blocked pursuant to this part will have the program tags “[SDGT] [IRGC]” at the end of its entry on the SDN List. The SDN List is accessible through the following page on the Office of Foreign Assets Control’s website: <https://www.treasury.gov/sdn>. Additional information pertaining to the SDN List can be found in appendix A to this chapter. See § 594.412 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section.

Note 3 to § 594.201. The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. Except as described in note 4 to this section, the names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section are published in the **Federal Register** and incorporated into the SDN List with the identifier “[BPI–PA]” or “[BPI–SDGT].”

Note 4 to § 594.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to

financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 5 to § 594.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

* * * * *

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

■ 68. The authority citation for part 598 continues to read as follows:

Authority: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

Subpart B—Prohibitions

■ 69. Amend § 598.202 by revising and republishing note 2 to paragraph (a) to read as follows:

§ 598.202 Prohibited transactions.
(a) * * *

Note 2 to paragraph (a). Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this paragraph (a).

* * * * *

■ 70. Amend § 598.314 as follows:
■ a. In note 2 to § 598.314, in the second sentence:
■ i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
■ ii. Remove “also”.
■ b. Redesignate note 3 to § 598.314 as note 4 to § 598.314.
■ c. Add new note 3 to § 598.314.
■ d. Revise newly designated note 4 to § 598.314.

The addition and revision read as follows:

§ 598.314 Specially designated narcotics trafficker.
* * * * *

Note 3 to § 598.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of

a specially designated narcotics trafficker; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

Note 4 to § 598.314. Subpart E of part 501 of this chapter describes the procedures to be followed for the unblocking of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this part.

PART 599—ILLICIT DRUG TRADE SANCTIONS REGULATIONS

■ 71. The authority citation for part 599 is revised to read as follows:

Authority: 3 U.S.C. 301; 21 U.S.C. 2301 *et seq.*; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 14059, 86 FR 71549, 3 CFR, 2021 Comp., p. 715.

Subpart B—Prohibitions

■ 72. Amend § 599.201 as follows:
■ a. In note 2 to § 599.201, in the second sentence:
■ i. Remove “The names” and add in its place “Except as described in note 3 to this section, the names”; and
■ ii. Remove “also”.
■ b. Redesignate notes 3 and 4 to § 599.201 as notes 4 and 5 to § 599.201, respectively.
■ c. Add new note 3 to § 599.201.
■ d. Revise newly designated note 5 to § 599.201.

The addition and revision read as follows:

§ 599.201 Prohibited transactions.
* * * * *

Note 3 to § 599.201. In certain cases, OFAC may issue an order to: identify as blocked specific property or interests in property of a person designated or otherwise blocked pursuant to this section; block specific property or interests in property of a person pending investigation; or block or impose other prohibitions with respect to specific property or interests in property less than full

blocking sanctions. Notice of such orders will be provided: by publication in the **Federal Register**; in writing to persons OFAC may assess to have an interest in the property; or by issuing an order or directive in writing to financial institutions or other transaction intermediaries, and requiring the recipient of the order or directive to promptly disclose it to affected persons with whom the recipient maintains direct commercial relationships. Inquiries regarding any such order should be directed to OFAC's Compliance Division at 202–622–2490 or <https://ofac.treasury.gov/contact-ofac>.

* * * * *

Note 5 to § 599.201. Subpart E of part 501 of this chapter describes the procedures to be followed for the release of property and interests in property blocked pursuant to this section, including funds blocked due to mistaken identity or typographical or similar errors, and for administrative reconsideration of one's status as a person whose property and interests in property are blocked pursuant to this section.

Lisa M. Palluconi,
Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024–20857 Filed 9–13–24; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2024–0771]

RIN 1625–AA08

Special Local Regulation; Kailua Bay, Ironman World Championship, Kailua-Kona, Hawaii

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for certain waters of Kailua Bay, Hawaii, from Kailua Pier to about 3 miles southeast in Kahului Bay. This action is necessary to protect persons on these navigable waters located at Kailua-Kona, HI, during the swim portion of the Ironman World Championship Triathlon and practice swim held on October 20 and 26, 2024. Entry of persons and vessels into the regulated area is prohibited unless specifically authorized by the Sector Honolulu Captain of the Port.

DATES: This rule is effective from 3:45 a.m. to 1:30 p.m., on October 20 and 26, 2024.

ADDRESSES: To view documents mentioned in this preamble as being

available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0771 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 Petty Officer Vivian S. Gonzalez, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 522–8264, email Vivian.S.Gonzalez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
SLR Special Local Regulation
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.” This annually reoccurring event has a permanent special local regulation, 33 CFR 100.1402, with enforcement dates on the first two weekends in October. This year, however, the event is occurring on October 20 and 26, 2024 due to conflicts of schedules. The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because prompt action is necessary to respond to the potential safety hazards associated with the swim event. It is impracticable to publish an NPRM because we must establish this special local regulation by October 20, 2024.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Sector Honolulu (COTP) has determined that potential safety hazards exist necessitating the movement restriction of all vessels and persons, including event participants, in the regulated area. The purpose of this rule is to ensure safety of persons and navigable waters in the regulated area before, during, and after the events.

IV. Discussion of the Rule

This rule establishes a special local regulation from 3:45 a.m. to 1:30 p.m., on October 20 and 26, 2024. The regulated area will cover all navigable waters of Kailua Bay within 100 yards adjacent to the 2.4 mile (4,224 yards) swim course, starting at the shoreline northeast of Kailua Pier at 19°38.341' N, 155°59.782' W; thence southeast to 19°37.416' N, 155°59.444' W; thence southwest to 19°37.397' N, 155°59.500' W; thence northwest to 19°38.150' N, 155°59.760' W, thence north and back to Kailua Pier at 19°38.398' N, 155°59.816' W, and returning along the pier to the originating point on the shoreline at 19°38.341' N, 155°59.782' W.

The duration of the rule and size of the regulated area is intended to protect personnel, vessels, and the marine environment in these navigable waters before, during, and after the event scheduled from 3:45 a.m. to 1:30 p.m. on October 20 and 26, 2024. The COTP and Coast Guard Patrol Commander (PATCOM) will have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the lawful directions given by the COTP or PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for event participants and vessels already identified as part of the event safety or security, a vessel or person will be required to get permission from the COTP or PATCOM before entering the regulated area while the rule is enforced. Vessel operators can request permission to enter and transit through the regulated area by contacting the PATCOM on VHF–FM channel 16. Vessel traffic will be able to safely transit the regulated area once the PATCOM deems it safe to do so. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols will be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Honolulu, with a commissioned, warrant, or petty officer on board.

If permission is granted by the COTP or PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed while within the regulated area. Official patrol vessels

will assist with the safety of the event and ensure spectator vessels remain outside the regulated area. The designated swim area will remain closed until the scheduled swim events have concluded and the regulated area is deemed safe for normal operations.

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 size, location, duration, and time-of-day of the rule. Vessel traffic will be able to safely transit around the regulated area which will impact a small, designated area of the Kailua-Kona Bay for less than 10 hours during two weekends when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulated area, and the rule will allow vessels to seek permission to enter the regulated area, as well as a Local Notice to Mariners to prepare all waterways users.

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 regulated area 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 will 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 implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 100

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 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T14–0771 to read as follows:

§ 100.T14–0771 Special Local Regulation; Kailua Bay, Ironman World Championship, Kailua-Kona, Hawaii.

(a) *Regulated areas.* The regulations in this section apply to the following area: all navigable waters starting at the shoreline northeast of Kailua Pier at 19°38.341' N, 155°59.782' W; thence southeast to 19°37.416' N, 155°59.444' W; thence southwest to 19°37.397' N, 155°59.500' W; thence northwest to 19°38.150' N, 155°59.760' W, thence north and back to Kailua Pier at 19°38.398' N, 155°59.816' W, and returning along the pier to the originating point on the shoreline at to 19°38.341' N, 155°59.782' W. These coordinates reference Datum NAD 1983.

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

Buffer area is a neutral 100-yard area that surrounds the perimeter of the course area's navigable waters as described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants and spectator vessels or nearby transiting vessels. This area provides separation between a course area and spectator viewing areas.

Captain of the Port Honolulu (COTP) means the Commander, U.S. Coast Guard Sector Honolulu or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on their behalf.

Coast Guard Patrol Commander (PATCOM) means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated as PATCOM by the Commander, Coast Guard Sector Honolulu.

Course area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of the event swim area within the overall regulated area defined by this section. The 2.24-mile (4,224 yards) swim course is a temporary marked swim course within the regulated area located in Kailua Bay.

Enforcement vessels are designated vessels authorized by the COTP, the event PATCOM, or COTP's designated representatives to support the safety and security of the marine event.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Honolulu with a commissioned, warrant, or petty officer on board.

Participant means any persons registered with the event sponsor as participating in the Ironman Triathlon or practice swim.

Regulated area is the combined course area and buffer area.

Spectators are all persons and vessels not registered with the sponsor as participants, support vessels, or enforcement vessels.

(c) *Regulations.* (1) The COTP or PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the lawful directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP or PATCOM may terminate the event at any time the COTP or PATCOM believes it necessary to do so for the protection of life.

(2) Except for participants and safety support vessels, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) Support and enforcement vessels consist of any local law enforcement and sponsor provided vessels assigned or approved by the COTP, the event PATCOM, or COTP designated representatives, to patrol the regulated area.

(4) Spectators shall not enter into, anchor, block, loiter, or impede the transit of participants or support and enforcement vessels in the regulated area during the enforcement of this section, unless cleared for entry by the COTP, the event PATCOM, or the COTP's designated representatives.

(5) Persons desiring to transit the regulated area identified may contact the COTP in advance at the Sector Honolulu Command Center telephone number (808) 842-2603 or immediately prior to or during the event to the COTP's PATCOM or designated representative on VHF-FM marine channel 16 (156.8 Mhz) to seek permission to transit or remain in the area. If permission is granted, all persons and vessels must comply with the lawful instructions of the COTP, the event PATCOM, or the COTP's designated representative and proceed at the minimum speed necessary to maintain a safe course while in the area.

(6) If enforcement of the regulated area is no longer necessary, the COTP, event Patrol Commander, or COTP designated representative will inform the public through radio broadcasts that the regulated area is no longer being enforced.

(d) *Enforcement officials.* The Coast Guard may be assisted with event patrol and enforcement of the regulated area

by other Federal, State, and local agencies.

(e) *Enforcement period.* The marine event and special local regulation in this section will be enforced from 3:45 a.m. to 11 a.m. on October 20 and 26, 2024.

Dated: September 10, 2024.

Aja L. Kirksey,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 2024-21070 Filed 9-16-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2024-0815]

RIN 1625-AA00

Safety Zone; Vessel Launch, San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters in the vicinity of General Dynamics NASSCO shipyard in San Diego Bay, San Diego, CA, during the launch of the USNS Lucy Stone. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the launching of the USNS Lucy Stone. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector San Diego.

DATES: This rule is effective from 10:30 a.m. on September 21, 2024, through 1 p.m. on September 21, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2024-0815 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 Shelley Turner, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619-278-7656, email MarineEventsSD@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 the authority in 5 U.S.C. 553(b)(4)(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. It is impracticable to publish an NPRM because we must establish this safety zone by September 21, 2024, to ensure the safety of response personnel and mariners associated with the launching of the USNS Lucy Stone.

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 is impracticable because this rule is needed to protect mariners, commercial and recreational waterway users, and the USNS Lucy Stone from dangers associated with the launching of the USNS Lucy Stone on September 21, 2024.

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 San Diego (COTP) has determined that potential hazards associated with the launching of the USNS Lucy Stone on September 21, 2024 will be a safety concern for anyone in the vicinity of the General Dynamics NASSCO shipyard, San Diego Bay, San Diego, CA. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the USNS Lucy Stone is being launched.

IV. Discussion of the Rule

This rule establishes a safety zone from 10:30 a.m. until 1 p.m. on September 21, 2024. The safety zone will be in the vicinity of General Dynamics NASSCO shipyard in San Diego Bay, San Diego, CA. The safety zone will cover all navigable waters, from surface to sea bottom, of the San Diego Bay, CA, created by connecting the following points: beginning at 32°41.39' N, 117°08.66' W (Point A); thence running southwesterly to 32°41.24' N, 117°09.05' W (Point B);

thence running southeasterly to 32°41.05' N, 117°08.73' W (Point C); thence running northeasterly to 32°41.20' N, 117°08.34' W (Point D); thence running northwesterly to the beginning point. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the USNS Lucy Stone is being launched. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

To seek permission to enter, hail Coast Guard Sector San Diego on VHF-FM Channel 16 or call the 24-hour Command Center at (619) 278-7000. 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. A designated representative means a Coast Guard coxswain or petty officer designated by or assisting the Captain of the Port Sector San Diego (COTP) in the enforcement of the safety zone.

The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate for the enforcement times and dates for the safety zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and limited duration of the safety zone. This safety zone impacts a small, designated area of the San Diego Bay for a very limited period during the weekend when vessel traffic is normally low.

Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via

VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

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

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T11–178 to read as follows:

§ 165.T11–178 Safety Zone; Vessel Launch, San Diego Bay, San Diego, CA.

(a) *Location.* The following area is a safety zone: All waters of San Diego Bay, from surface to bottom, encompassed by a line beginning at 32°41.39' N, 117°08.66' W (Point A); thence running southwesterly to 32°41.24' N, 117°09.05' W (Point B); thence running southeasterly to 32°41.05' N, 117°08.73' W (Point C); thence running northeasterly to 32°41.20' N, 117°08.34' W (Point D); thence running northwesterly to the beginning point.

(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 Sector San Diego (COTP) in the enforcement of the safety zone.

(c) *Regulations.* 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. Those in the safety zone must comply with all lawful orders or directions

given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. to 1 p.m. on September 21, 2024.

J.W. Spittler,

Captain, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 2024–21042 Filed 9–16–24; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

OEL and Carrier Route Information Lines

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to revise the requirements for using optional endorsement lines or carrier route information lines on USPS Marketing Mail carrier route letters.

DATES: *Effective:* January 19, 2025.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy at (202) 268–6592 or Doriane Harley at (202) 268–2537.

SUPPLEMENTARY INFORMATION: The Postal Service will revise the standards in DMM section 203.8.1 to require optional endorsement lines or carrier route information lines on all USPS Marketing Mail carrier route letters to become effective on January 19, 2025.

Comments on Proposed changes and USPS responses:

The Postal Service received one formal comment on the June 28, 2024 proposed rule.

• Commenter expressed concerns related to costs to implement this change by the proposed effective date. The Postal Service has decided to delay the implementation date of this change to become effective on January 19, 2025.

The Postal Service adopts the described changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service amends *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by

reference in the Code of Federal Regulations as follows (see 39 CFR 111.1):

PART 111—[AMENDED]

- 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

- 2. Revise the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters, Cards, Flats, and Parcels

* * * * *

203 Basic Postage Statement, Documentation, and Preparation Standards

* * * * *

8.0 Carrier Route Information Lines

8.1 Basic Information

[Revise the text of 8.1 to read as follows:]

Mailers must prepare bundles of all mailpieces mailed at carrier route prices with optional endorsement lines under 7.0, carrier route information lines under 8.2, or facing slips (see 203.4.0). Mailers must use optional endorsement lines or carrier route information lines on all pieces in mailings of USPS Marketing Mail letters prepared under 245.6.7 and 245.6.10.

* * * * *

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–21119 Filed 9–16–24; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2023–0186; FRL–12105–02–R1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze State implementation plan (SIP) revision submitted by Connecticut on January 5, 2022, as satisfying applicable requirements under the Clean Air Act (CAA) and EPA's Regional Haze Rule for the program's second implementation period. Connecticut's SIP submission addresses the requirement that States must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program. The EPA is taking this action pursuant to sections 110 and 169A of the Clean Air Act.

DATES: This rule is effective on October 17, 2024.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2023-0186. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, U.S. Environmental Protection Agency, Region 1, Air Quality Branch, 5 Post Office Square—Suite 100, (Mail code 5—MI), Boston, MA 02109-3912, at 617-918-1628, or by email at rackauskas.eric@epa.gov.

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

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- I. Background and Purpose
- II. Response to Comments

III. Final Action

IV. Statutory and Executive Order Reviews

I. Background and Purpose

On January 5, 2022, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a revision to its SIP to address regional haze for the second implementation period. CT DEEP made this SIP submission to satisfy the requirements of the CAA's regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308. On July 19, 2024, EPA published a notice of proposed rulemaking (NPRM) in which EPA proposed to approve Connecticut's January 5, 2022, SIP submission as satisfying the regional haze requirements for the second implementation period contained in the CAA and 40 CFR 51.308 (89 FR 58663). EPA is now finalizing its proposed determination that the Connecticut regional haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements and is thus approving New Hampshire's submission into its SIP.

Other specific requirements of the Connecticut submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here.

II. Response to Comments

EPA received five comments during the comment period. Four supported the EPA's proposed action. The fifth comment discusses subjects outside the scope of this SIP action and fails to assert (and explain how) EPA approval of Connecticut's Regional Haze SIP submission is erroneous or otherwise inconsistent with the CAA, applicable regulations, or other authorities. As such, the comment does not require further response to finalize the action as proposed.

III. Final Action

EPA is approving Connecticut's January 5, 2022, SIP submission as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f), (g), and (i), and incorporating the submission into the State's SIP.

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, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act.

Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. EPA defines EJ as

“the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The Connecticut Department of Energy and Environmental Protection did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for communities with EJ concerns.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: September 11, 2024.

David Cash,

Regional Administrator, EPA Region 1.

For the reasons stated in the preamble, EPA amends part 52 of chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart H—Connecticut

- 2. Section 52.370 is amended by adding paragraph (c)(133) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(133) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on January 5, 2022.

(i) [Reserved]

(ii) *Additional materials.* (A) The Connecticut Department of Energy and Environmental Protection document “Connecticut Regional Haze State Implementation Plan Revision—Second Implementation Period (2018–2028)”.

(B) [Reserved]

[FR Doc. 2024–21041 Filed 9–16–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 24–176; RM–11984; DA 24–891; FR ID 243632]

Television Broadcasting Services Cape Girardeau, Missouri

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 Gray Television Licensee, LLC (Gray), the licensee of KFVS–TV (Station or KFVS–TV), Cape Girardeau, Missouri (Cape Girardeau). Gray requests amendment of the Table of TV Allotments to substitute channel 11 for channel 32. Gray filed comments in support of the Petition, as required by the Commission’s rules (rules), reaffirming its interest in the proposed channel substitution and that it will promptly file an application seeking authorization on channel 11.

DATES: Effective October 17, 2024.

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

SUPPLEMENTARY INFORMATION: The proposed rule was published at 89 FR 56250 on July 9, 2024. Gray filed comments in support of the petition reaffirming its commitment to apply for channel 11. No other comments were received.

The Bureau believes the public interest would be served by substituting channel 11 for channel 32 at Cape Girardeau. On May 17, 2021, the Bureau granted a petition for rulemaking submitted by Gray to substitute channel 32 for channel 11 at Cape Girardeau for KFVS–TV. Gray was also granted a construction permit to construct a facility on channel 32 at Cape Girardeau, but was unable to complete construction of the channel facility by the expiration date—June 23, 2024. Thus, Gray requests amendment of the Table of TV Allotments to allow it to continue to operate pursuant to the parameters of its current license on channel 11. The substitution of channel 11 for channel 32 in the TV Table of Allotments will allow the Station to remain on the air and continue to provide service to viewers within its service area. Gray proposes to utilize its currently licensed parameters, and as such we find that channel 11 can be substituted for channel 32 at Cape Girardeau as proposed, in compliance with the principal community coverage requirements of § 73.618(a) of the rules, at coordinates 37°–25′–44.7″ N and 089°–30′–14.2″ W. In addition, we find that this channel substitution 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. 24–176; RM–11984; DA 24–891, adopted September 5, 2024, and released September 5, 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(j), amend the Table of TV Allotments, under Missouri, by revising the entry for Cape Girardeau to read as follows:

§ 73.622 Digital television table of allotments.

*	*	*	*	*
(j) * * *				
Community			Channel No.	
*	*	*	*	
Missouri				
Cape Girardeau			11, 36	
*	*	*	*	

[FR Doc. 2024–21075 Filed 9–16–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants

CFR Correction

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

In Title 50 of the Code of Federal Regulations, Part 17 (§§ 17.1 to 17.95(a)), revised as of October 1, 2023, in § 17.11, amend paragraph (h) by revising the entry for “Hawaiian hoary bat” and adding an entry for “Rice’s Whale”.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
Bat, Hawaiian hoary (opeapea) ..	<i>Aeorestes semotus</i>	Wherever found	E	35 FR 16047, 10/13/1970.
Whale, Rice’s	<i>Balaenoptera ricei</i>	Wherever found	E	84 FR 15446, 4/15/2019; 86 FR 47022, 8/23/2021; ^N 87 FR 8981, 2/17/2022.

[FR Doc. 2024–21155 Filed 9–16–24; 8:45 am]

BILLING CODE 0099–10–P

Proposed Rules

Federal Register

Vol. 89, No. 180

Tuesday, September 17, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-2140; Project Identifier MCAI-2024-00242-T]

RIN 2120-AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Embraer S.A. Model EMB-120, -120ER, -120FC, -120QC, and -120RT airplanes. This proposed AD was prompted by a structural assessment, which found that a fuselage longitudinal skin splice and panel between certain frames is susceptible to cracking. This proposed AD would require performing repetitive inspections of the fuselage center I longitudinal skin splice and applicable corrective actions, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 1, 2024.

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

- **Federal eRulemaking Portal:** Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2140; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2140.

FOR FURTHER INFORMATION CONTACT:

Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206-231-3653; email: Hassan.M.Ibrahim@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES** section. Include “Docket No. FAA-2024-2140; Project Identifier MCAI-2024-00242-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206-231-3653; email: Hassan.M.Ibrahim@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2024-04-02R01, effective May 31, 2024 (ANAC AD 2024-04-02R01) (also referred to as the MCAI), to correct an unsafe condition for all Embraer S.A. Model EMB-120, -120ER, -120FC, -120QC, and -120RT airplanes. The MCAI states that a structural assessment found that the fuselage center I longitudinal skin splice and panel between frames 22 and 23 is susceptible to cracking. The assessment found cracks associated with damage at multiple sites that are typically too small to be reliably detected with current inspection methods. Without intervention, these cracks may grow,

and could result in reduced structural integrity of the airplane.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–2140.

Material Incorporated by Reference Under 1 CFR Part 51

ANAC AD 2024–04–02R01 specifies initial and repetitive high-frequency eddy current inspections for discrepancies (including cracks, corrosion, scratches and nicks) of the fuselage center I longitudinal skin splice and panel between frames 22 and 23, from the internal and external sides of the fuselage. ANAC AD 2024–04–02R01 further specifies corrective actions including obtaining and implementing instructions for repair and reporting of the inspection results. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in ADDRESSES section.

FAA’s Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in ANAC AD 2024–04–02R01 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD

process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate ANAC AD 2024–04–02R01 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with ANAC AD 2024–04–02R01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Material required by ANAC AD 2024–04–02R01 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–2140 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 51 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × \$85 per hour = \$340 per inspection cycle.	\$0	\$340 per inspection cycle	\$17,340 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the corrective actions specified in this proposed AD.

Paperwork Reduction Act

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

suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.): Docket No. FAA–2024–2140; Project Identifier MCAI–2024–00242–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 1, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Embraer S.A. (Type Certificate previously held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a structural assessment that indicated the fuselage center I longitudinal skin splice and panel between frames 22 and 23 is susceptible to cracking. The FAA is issuing this AD to address undetected cracks in the fuselage center I longitudinal skin splice and panel between frames 22 and 23. The unsafe condition, if not addressed, could result in undetected fuselage crack propagation, and reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Agência Nacional de Aviação Civil (ANAC) AD 2024–04–02R01, effective May 31, 2024 (ANAC AD 2024–04–02R01).

(h) Exceptions to ANAC AD 2024–04–02R01

(1) Where ANAC AD 2024–04–02R01 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraphs (b)(1) and (2) of ANAC AD 2024–04–02R01 specify the initial compliance time for the high-frequency eddy current inspection of the fuselage center I longitudinal skin splice—frames 22 and 23, from the internal and external side of the fuselage, for this AD, the initial compliance time for doing the high-frequency eddy current inspection is prior to the accumulation of 50,000 total flight cycles, or within 800 flight cycles after the effective date of this AD, whichever occurs later.

(3) Where paragraphs (d)(1) and (2) of ANAC AD 2024–04–02R01 specify the initial compliance time for the high-frequency eddy current inspection of the fuselage center I skin panel—frames 22 and 23, from the external side of the fuselage, for this AD, the initial compliance time for doing the high-frequency eddy current inspection is prior to the accumulation of 50,000 total flight cycles, or within 800 flight cycles after the effective date of this AD, whichever occurs later.

(4) Where paragraphs (b)(3) and (d)(3) of ANAC AD 2024–04–02R01 specify corrective actions, for this AD, if any discrepancy including cracking is detected during any inspection required by this AD, the discrepancy must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or ANAC; or Embraer's ANAC Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(5) Paragraph (f) of ANAC AD 2024–04–02R01 specifies to report inspection results to ANAC and Embraer within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(5)(i) or (ii) of this AD.

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

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

(6) This AD does not adopt paragraph (g) of ANAC AD 2024–04–02R01.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved

by the Manager, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(j) Additional Information

For more information about this AD, contact Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3653; email: Hassan.M.Ibrahim@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Agência Nacional de Aviação Civil (ANAC) AD 2024–04–02R01, effective May 31, 2024.

(ii) [Reserved]

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

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

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

Issued on September 10, 2024.

Victor Wicklund,

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

[FR Doc. 2024–20991 Filed 9–16–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1337]

Schedules of Controlled Substances: Temporary Placement of N-Pyrrolidino Metonitazene and N-Pyrrolidino Protonitazene in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Proposed amendment; notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to publish a temporary order to schedule two synthetic benzimidazole-opioid substances, *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, in schedule I of the Controlled Substances Act. When it is issued, the temporary scheduling order will impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess) or propose to handle these two specified substances.

DATES: This notice of intent is effective September 17, 2024.

FOR FURTHER INFORMATION CONTACT:

Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 362-3249.

SUPPLEMENTARY INFORMATION: The notice of intent contained in this document is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary scheduling order¹ (in the form of a temporary amendment) to add the two synthetic benzimidazole-opioid substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, to schedule I under the Controlled Substances Act (CSA):

- 2-(4-methoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1*H*-benzimidazole (commonly known as, *N*-pyrrolidino metonitazene or metonitazepyne), and
- 5-nitro-2-(4-propoxybenzyl)-1-(2-(pyrrolidin-1-yl)ethyl)-1*H*-benzimidazole (commonly known as, *N*-pyrrolidino protonitazene or protonitazepyne).

The temporary scheduling order will be published in the **Federal Register** on or after October 17, 2024.

Legal Authority

Under 21 U.S.C. 811(h)(1), the CSA provides the Attorney General (as delegated to the Administrator of DEA (Administrator) pursuant to 28 CFR 0.100) has the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the evaluation requirements of 21 U.S.C. 811(b), if he finds that such action is necessary to avoid an imminent hazard to the public safety.² In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Attorney General may extend the temporary scheduling for up to one year.³

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355.⁴

Background

The CSA requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of an intent to temporarily place a substance in schedule I of the CSA (*i.e.*, to issue a temporary scheduling order).⁵ By letter dated December 15, 2023, the Administrator transmitted the required notice to place *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene in schedule I on a temporary basis to the Assistant Secretary for Health of HHS (Assistant Secretary).⁶ On December 22, 2023, the Assistant Secretary responded to this notice and advised DEA that based on a review by the Food and Drug Administration (FDA), there are currently no investigational new drug applications (IND) or approved new drug applications (NDA) for *N*-pyrrolidino metonitazene or *N*-pyrrolidino protonitazene. The Assistant Secretary also stated that HHS had no objection to the temporary placement of these substances in schedule I of the CSA. *N*-Pyrrolidino metonitazene and *N*-pyrrolidino protonitazene currently are not listed in any schedule under the CSA, and no exemptions or approvals under 21

U.S.C. 355 are in effect for these substances.

To find that temporarily placing a substance in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator must consider three of the eight factors set forth in 21 U.S.C. 811(c): the substance's history and current pattern of abuse; the scope, duration, and significance of abuse; and what, if any, risk there is to the public health.⁷ This consideration includes any information indicating actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution of *N*-Pyrrolidino metonitazene and *N*-pyrrolidino protonitazene.⁸

Substances meeting the statutory requirements for temporary scheduling may only be placed in schedule I.⁹ Substances in schedule I have high potential for abuse, no currently accepted medical use in treatment in the United States,¹⁰ and a lack of accepted

⁷ 21 U.S.C. 811(h)(3).

⁸ 21 U.S.C. 811(h)(3).

⁹ 21 U.S.C. 811(h)(1).

¹⁰ When finding schedule I placement on a temporary basis is necessary to avoid imminent hazard to the public, 21 U.S.C. 811(h) does not require DEA to consider whether the substance has a currently accepted medical use in treatment in the United States. Nonetheless, there is no evidence suggesting that *N*-pyrrolidino metonitazene or *N*-pyrrolidino protonitazene have a currently accepted medical use in treatment in the United States. To determine whether a drug or other substance has a currently accepted medical use, DEA has traditionally applied a five-part test to a drug or substance that has not been approved by the FDA: i. The drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. See *Marijuana Scheduling Petition; Denial of Petition; Remand*, 57 FR 10499 (Mar. 26, 1992), *pet. for rev. denied*, *Alliance for Cannabis Therapeutics v. Drug Enforcement Admin.*, 15 F.3d 1131, 1135 (D.C. Cir. 1994). DEA and HHS applied the traditional five-part test for currently accepted medical use in this matter. In a recent published letter in a different context, HHS applied an additional two-part test to determine currently accepted medical use for substances that do not satisfy the five-part test: (1) whether there exists widespread, current experience with medical use of the substance by licensed health care providers operating in accordance with implemented jurisdiction-authorized programs, where medical use is recognized by entities that regulate the practice of medicine, and, if so, (2) whether there exists some credible scientific support for at least one of the medical conditions for which part (1) is satisfied. On April 11, 2024, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion, which, among other things, concluded that HHS's two-part test would be sufficient to establish that a drug has a currently accepted medical use. Office of Legal Counsel, Memorandum for Merrick B. Garland Attorney General Re: Questions Related to the Potential Rescheduling of Marijuana at 3 (April 11, 2024). For purposes of this notice of intent, there is no evidence that health care providers have

² 21 U.S.C. 811(h)(1).

³ 21 U.S.C. 811(h)(2).

⁴ 21 U.S.C. 811(h)(1); 21 CFR part 1308.

⁵ 21 U.S.C. 811(h)(4).

⁶ The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

¹ Though DEA has used the term "final order" with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a "temporary scheduling order." No substantive change is intended.

safety for use under medical supervision.¹¹

Two Benzimidazole-Opioids: *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene

The continued encounter of novel synthetic opioids on the recreational drug market poses a threat to public safety. Beginning in 2019, a new class of synthetic opioids known as benzimidazole-opioids, commonly referred to as “nitazenes,” emerged on the recreational drug market. This class of substances has a similar pharmacological profile to fentanyl, morphine, and other mu-opioid receptor agonists. Between August 2020 and March 2024, DEA temporarily controlled ten benzimidazole-opioids because they posed a threat to public safety.¹² *N*-Pyrrolidino metonitazene and *N*-pyrrolidino protonitazene are some of the recently encountered “nitazene” synthetic opioids identified on the illicit drug market.

The continued trafficking and identification of benzimidazole-opioids in toxicology cases poses a significant threat to public health and safety. Adverse health effects associated with the misuse and abuse of synthetic opioids have led to devastating consequences including death. Preclinical pharmacology data demonstrate that *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene have pharmacological profiles similar to those of the potent benzimidazole-opioids metonitazene and protonitazene, schedule I opioid substances. *N*-Pyrrolidino metonitazene and *N*-pyrrolidino protonitazene have been positively identified in at least 26 toxicology cases. As the United States continues to experience a high number of opioid-involved overdoses and mortalities, the introduction of new designer opioids further exacerbates the current opioid epidemic.

Available data and information for *N*-pyrrolidino metonitazene and *N*-

widespread experience with medical use of *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene or that the use of *N*-pyrrolidino metonitazene or *N*-pyrrolidino protonitazene is recognized by entities that regulate the practice of medicine under either the traditional five-part test or the two-part test.

¹¹ 21 U.S.C. 812(b)(1).

¹² Schedules of Controlled Substances: Temporary Placement of Butonitazene, Etodesnitazene, Flunitazene, Metodesnitazene, Metonitazene, *N*-Pyrrolidino etonitazene, and Protonitazene in Schedule I, 87 FR 21556 (Apr. 12, 2022); Schedules of Controlled Substances: Temporary Placement of Isotonitazene in Schedule I, 85 FR 51342 (Aug. 20, 2020); Schedules of Controlled Substances: Temporary Placement of *N*-Desethyl Isotonitazene and *N*-Piperidinyl Etonitazene in Schedule I, 89 FR 60817 (Jul. 29, 2024).

pyrrolidino protonitazene, summarized below, indicate that these substances have high potentials for abuse, no currently accepted medical uses in treatment in the United States, and a lack of accepted safety for use under medical supervision. DEA's three-factor analysis is available in its entirety under “Supporting and Related Material” of the public docket for this action at www.regulations.gov under Docket Number DEA-1337.

Factor 4. History and Current Pattern of Abuse

Since 2019, there has been an emergence of benzimidazole-opioid compounds on the illicit drug market, which have been positively identified in numerous cases of fatal overdose events. The benzimidazole-opioids were originally synthesized and studied in the 1950s by the pharmaceutical research laboratories of the Swiss chemical company Chemical Industries Basel. The research produced a group of structurally unique benzimidazole derivatives with analgesic properties; however, the research effort did not produce any medically approved analgesic products. These benzimidazole derivatives include schedule I substances, such as synthetic opioids clonitazene, etonitazene, and isotonitazene.

In August 2020, isotonitazene was placed in schedule I of the CSA (85 FR 51342). Subsequently, nine additional benzimidazole-opioids¹³ have been placed in schedule I of the CSA (87 FR 21556 and 89 FR 60817). Recently, *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene have emerged on the illicit drug market. Law enforcement officers have encountered *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene in several solid forms (e.g., powder and tablets). These substances are not approved pharmaceutical products and are not approved for medical use anywhere in the world. The Assistant Secretary in a letter to DEA dated December 22, 2023, stated that there are no FDA-approved NDAs or IND applications for *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene in the United States; hence, there are no legitimate channels for these substances as marketed drug products.

The appearance of benzimidazole-opioids on the illicit drug market is similar to other designer opioid drugs that are trafficked for their psychoactive

effects. These substances are likely to be abused in the same manner as schedule I opioids, such as etonitazene, isotonitazene, and heroin. In 2023, *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene emerged on the illicit synthetic drug market as evidenced by their identification in forensic drug seizures and in biological samples.¹⁴ Based on NFLIS-Drug data, law enforcement encounters of *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene were found in combination with other substances of abuse such as heroin, designer benzodiazepines, cocaine, fentanyl, methamphetamine, and xylazine.

Factor 5. Scope, Duration and Significance of Abuse

N-Pyrrolidino metonitazene and *N*-pyrrolidino protonitazene, similar to etonitazene, metonitazene and protonitazene (schedule I substances), have been described as potent synthetic opioids, and evidence suggests they are abused for their opioidergic effects (see Factor 6). The abuse of these benzimidazole-opioids, similar to other synthetic opioids, has resulted in serious adverse health effects.

According to a public alert report¹⁵ published in August 2023, *N*-pyrrolidino protonitazene has been positively confirmed in 20 medicolegal death investigation cases in the United States (n = 16) and United Kingdom (n = 4). The cases that occurred in the United States originated from seven States including California, Illinois, Maine, Massachusetts, Minnesota, Wisconsin, and Wyoming. *N*-Pyrrolidino metonitazene has been identified in six toxicology cases as of June 2023 in the United States. The cases occurred in at least three States including Ohio, Illinois, and West Virginia.¹⁶

Data from law enforcement suggest that *N*-pyrrolidino metonitazene and *N*-

¹⁴ NMS Labs, in collaboration with the Center for Forensic Science Research and Education at the Fredric Rieders Family Foundation and the Organized Crime Drug Enforcement Task Force at the United States Department of Justice, has received funding from the Centers for Disease Control and Prevention to develop systems for the early identification and notification of novel psychoactive substances in the drug supply within the United States.

¹⁵ Krotulski, AJ; Walton, SE; Papsun, DM; DeBord, J; Fogarty, MF; Logan, BK. (2023) New Nitazene Analogue *N*-Pyrrolidino Protonitazene Impacting Drug Markets In North America and Europe, Center for Forensic Science Research and Education, United States. CSFRE Public Alert. August 2023.

¹⁶ Krotulski, AJ; Horton, KB; Walton, SE; Papsun, DM; DeBord, J; Fogarty, MF; Logan, BK. (2023) *N*-Pyrrolidino Metonitazene—NPS Discovery New Drug Monograph, Center for Forensic Science Research and Education, United States.

pyrrolidino protonitazene are being abused in the United States as recreational drugs.¹⁷ Since 2023, there have been 37 exhibits reported to the NFLIS-Drug (Federal, State and local laboratories) database pertaining to the trafficking, distribution, and abuse of these substances. There were seven encounters of *N*-pyrrolidino metonitazene from two States in NFLIS-Drug: Missouri (n = 2) and Ohio (n = 5). *N*-Pyrrolidino protonitazene has been identified in 30 exhibits in NFLIS-Drug from five States: Florida (n = 4), Iowa (n = 10), Missouri (n = 1), Ohio (n = 13), and Texas (n = 2).¹⁸

Because abusers of *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene are likely to obtain these substances through unregulated sources, the identity, purity, and quantity of these substances are uncertain and inconsistent, thus posing significant adverse health risks to the end user. The misuse and abuse of opioids have been demonstrated and are well-characterized.¹⁹ Individuals who initiate (*i.e.*, use a drug for the first time) use of these benzimidazole-opioids are likely to be at risk of developing substance use disorder, an overdose event, or death, similar to that of other opioid analgesics (*e.g.*, fentanyl, morphine, *etc.*). Law enforcement and toxicology reports demonstrate that *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene are being illicitly distributed and abused.

Factor 6. What, if Any, Risk There Is to the Public Health

The increase in opioid overdose deaths in the United States has been exacerbated recently by the availability of potent synthetic opioids on the illicit drug market. Data obtained from pre-clinical studies demonstrate that *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene exhibit pharmacological profiles similar to that of etonitazene, metonitazene, protonitazene, and other mu-opioid receptor agonists. These two benzimidazole-opioids bind to and act as agonists at the mu-opioid receptors.²⁰

It is well established that substances that act as mu-opioid receptor agonists have a high potential for addiction and can induce dose-dependent respiratory depression.²¹

Consistent with any mu-opioid receptor agonist, the potential health and safety risks for users of *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene are high. *N*-Pyrrolidino metonitazene and *N*-pyrrolidino protonitazene have been positively identified in forensic toxicology and post mortem cases. According to a public alert, *N*-pyrrolidino protonitazene has been positively identified in 20 medicolegal death investigations in the United States and United Kingdom as of August 2023. Of the cases, 16 occurred across seven States in the United States. Decedent ages ranged from mid-20s to mid-70s. *N*-Pyrrolidino protonitazene was co-identified with additional novel psychoactive substances (70 percent), quinine (60 percent), other benzimidazole-opioids (55 percent), methamphetamine/cocaine (55 percent), fentanyl (55 percent), xylazine (35 percent) and designer benzodiazepines (30 percent).²² Also, *N*-pyrrolidino metonitazene has been identified in six toxicology cases in the United States as of June 2023. The introduction of potent synthetic opioids such as *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene into the illicit market may serve as a portal to problematic opioid use for those seeking these powerful opioids. As documented by toxicology reports, polysubstance abuse remains common in fatalities associated with the abuse of some of these benzimidazole-opioids.

The United States is currently experiencing an opioid epidemic, and the presence of synthetic opioids on the illicit drug market further exacerbates the problem. The trafficking and abuse of new synthetic opioids are deadly trends which pose imminent hazard to the public safety. Adverse health effects associated with the abuse of synthetic opioids and the continued evolution and increased popularity of these substances have been a serious concern in recent years. Because of the pharmacological similarities of *N*-pyrrolidino metonitazene and *N*-

pyrrolidino protonitazene to metonitazene and protonitazene, the use of these substances presents high risk of abuse and may negatively affect users and communities. The positive identification of these substances in toxicology cases is of serious concern to the public safety. Thus, *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene pose imminent hazard to public safety.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene pose imminent hazards to public safety. DEA is not aware of any currently accepted medical uses for these substances in the United States. A substance meeting the statutory requirements for temporary scheduling, found in 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I must have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene indicate that these substances meet the three statutory criteria. As required by 21 U.S.C. 811(h)(4), the Administrator transmitted to the Assistant Secretary, via letter dated December 15, 2023, notice of her intent to place *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene in schedule I on a temporary basis. HHS had no objection to the temporary placement of these substances in schedule I.

Conclusion

This notice of intent provides the 30-day notice pursuant to 21 U.S.C. 811(h)(1) of DEA's intent to issue a temporary scheduling order. In accordance with 21 U.S.C. 811(h)(1) and (3), the Administrator considered available data and information, herein set forth the grounds for her determination that it is necessary to temporarily schedule *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene in schedule I of the CSA, and finds that placement of these substances in schedule I is necessary to avoid an imminent hazard to the public safety.

¹⁷ While law enforcement data are not direct evidence of abuse, they can lead to an inference that a drug has been diverted and abused. See 76 FR 77330, 77332 (Dec. 12, 2011).

¹⁸ NFLIS-Drug was queried on July 17, 2024.

¹⁹ Jones CM, Logan J, Gladden RM, Bohm MK. Vital Signs: Demographic and Substance Use Trends Among Heroin Users—United States, 2002–2013. *MMWR Morb Mortal Wkly Rep.* 2015 Jul 10;64(26):719–25.

²⁰ DEA–VA Interagency Agreement. “In Vitro Receptor and Transporter Assays for Abuse Liability Testing for the DEA by the VA”. Binding and Functional Activity at Delta, Kappa and Mu Opioid Receptors. 2022.

²¹ Fox LM, Hoffman RS, Vlahov D, Manini AF. Risk factors for severe respiratory depression from prescription opioid overdose. *Addiction.* 2018 Jan;113(1):59–66.

²² Krotulski, AJ; Walton, SE; Papsun, DM; DeBord, J; Fogarty, MF; Logan, BK. (2023) New Nitazene Analogue *N*-Pyrrolidino Protonitazene Impacting Drug Markets In North America and Europe, Center for Forensic Science Research and Education, United States. CSFRE Public Alert. August 2023.

The temporary placement of *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene in schedule I of the CSA will take effect pursuant to a temporary scheduling order, which will not be issued before October 17, 2024. Because the Administrator hereby finds this temporary scheduling order necessary to avoid an imminent hazard to the public safety, it will take effect on the date the order is published in the **Federal Register** and remain in effect for two years, with a possible extension of one year, pending completion of the regular (permanent) scheduling process.²³ The Administrator intends to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this document. Upon the temporary order's publication, *N*-pyrrolidino metonitazene and *N*-pyrrolidino protonitazene will then be subject to the CSA's schedule I regulatory controls and to administrative, civil, and criminal sanctions applicable to their manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis, and possession.

The CSA sets forth specific criteria for scheduling drugs or other substances. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures "on the record after opportunity for a hearing" conducted pursuant to the provisions of 5 U.S.C. 556 and 557.²⁴ The regular scheduling process of formal rulemaking affords interested parties appropriate process and the government any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review.²⁵ Temporary scheduling orders are not subject to judicial review.²⁶

Regulatory Analyses

The CSA provides for expedited temporary scheduling actions where necessary to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h)(1), the Administrator, as delegated by the Attorney General, may, by order, temporarily place substances in schedule I. Such orders may not be issued before the expiration of 30 days from: (1) The publication of a notice in the **Federal Register** of the intent to issue such order and the grounds upon

which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary, as delegated by the Secretary of HHS.²⁷

Inasmuch as section 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, including the requirement to publish in the **Federal Register** a notice of intent, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. The APA expressly differentiates between orders and rules, as it defines an "order" to mean a "final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency *in a matter other than rule making*."²⁸ (Emphasis added). This contrasts with permanent scheduling actions, which are subject to formal rulemaking procedures done "on the record after opportunity for a hearing," and final decisions that conclude the scheduling process and are subject to judicial review. 21 U.S.C. 811(a) and 877. The specific language chosen by Congress indicates its intent that DEA issue *orders* instead of proceeding by rulemaking when temporarily scheduling substances. Given that Congress specifically requires the Administrator (as delegated by the Attorney General) to follow rulemaking procedures for *other* kinds of scheduling actions, *see* 21 U.S.C. 811(a), it is noteworthy that, in section 811(h)(1), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

Even assuming that this notice of intent is subject to section 553 of the APA, the Administrator finds that there is good cause to forgo its notice-and-comment requirements, as any further delays in the process for issuing temporary scheduling orders would be impracticable and contrary to the public interest given the manifest urgency to avoid an imminent hazard to the public safety.

Although DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice-and-comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator took into consideration comments submitted by the Assistant Secretary in response to the notices that DEA transmitted to the Assistant Secretary pursuant to such subsection.

Further, DEA believes that this temporary scheduling action is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking. As discussed above, DEA is issuing this notice of intent pursuant to DEA's authority to issue a temporary scheduling order. 21 U.S.C. 811(h)(1). Therefore, in this instance, since DEA believes this temporary scheduling action is not a "rule," it is not subject to the requirements of the RFA when issuing this temporary action.

In accordance with the principles of Executive Orders (E.O.) 12866 and 13563, this action is not a significant regulatory action. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866, sec. 3(f), as amended by E.O. 14094, sec. 1(b), provides the definition of a "significant regulatory action," requiring review by the Office of Management and Budget. Because this is not a rulemaking action, this is not a significant regulatory action as defined in section 3(f) of E.O. 12866.

This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

²³ 21 U.S.C. 811(h)(1) and (2).

²⁴ 21 U.S.C. 811.

²⁵ 21 U.S.C. 877.

²⁶ 21 U.S.C. 811(h)(6).

²⁷ 21 U.S.C. 811(h)(1).

²⁸ 5 U.S.C. 551(6).

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (h)(70) and (71) to read as follows:

§ 1308.11 Schedule I

* * * * *
(h) * * *

(70) 2-(4-methoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1 <i>H</i> -benzimidazole, its isomers, esters, ethers, salts, and salts of isomers, esters and ethers (Other names: <i>N</i> -pyrrolidino metonitazene; metonitazepyne)	9762
(71) 5-nitro-2-(4-propoxybenzyl)-1-(2-(pyrrolidin-1-yl)ethyl)-1 <i>H</i> -benzimidazole, its isomers, esters, ethers, salts, and salts of isomers, esters and ethers (Other names: <i>N</i> -pyrrolidino protonitazene; protonitazepyne)	9763

Signing Authority

This document of the Drug Enforcement Administration was signed on September 11, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,
Federal Register Liaison Officer, Drug
Enforcement Administration.
[FR Doc. 2024–21058 Filed 9–16–24; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102161–23]

RIN 1545–BQ89

Identification of Basket Contract Transactions as Listed Transactions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of a notice of public hearing on a proposed rulemaking and notice of public hearing.

SUMMARY: This document cancels a public hearing on proposed regulations that would identify transactions that are the same as, or substantially similar to, certain basket contract transactions as listed transactions, a type of reportable transaction.

DATES: The public hearing scheduled for September 26, 2024, at 10 a.m. ET is cancelled.

ADDRESSES: Public comments submitted for the proposed rule can be viewed electronically via the Federal eRulemaking Portal at <https://www.regulations.gov> by searching REG–102161–23. The public hearing scheduled to be held in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC is cancelled.

FOR FURTHER INFORMATION CONTACT: Oluwafunmilayo Taylor, Section Chief, the Publications and Regulations Section at (202) 317–6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on July 12, 2024 (89 FR 57111), announced that a public hearing being held in person and by teleconference was scheduled for September 26, 2024, at 10 a.m. ET. The subject of the public hearing is under 26 CFR part 1.

The public comment period for these regulations expired on September 10, 2024. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to testify and an outline of the topics to be addressed. We did not receive a request to testify at the Public Hearing. Therefore, the public hearing scheduled for September 26, 2024, at 10 a.m. ET is cancelled.

Kalle L. Wardlow,
Federal Register Liaison, Publications and
Regulations, Associate Chief Counsel,
(Procedure & Administration).
[FR Doc. 2024–21039 Filed 9–16–24; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116787–23]

RIN 1545–BR31

Definition of the Term “Coverage Month” for Computing the Premium Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed regulations that would amend the definition of “coverage month” and amend certain other rules in existing income tax regulations regarding the computation of an individual taxpayer’s premium tax credit (PTC). The proposed coverage month amendment generally would provide that, in computing a PTC, a month may be a coverage month for an individual if the amount of the premium paid, including by advance payments of the PTC (APTC), for the month for the individual’s coverage is sufficient to avoid termination of the individual’s coverage for that month. The proposal also would amend the existing regulations relating to the amount of enrollment premiums used in computing the taxpayer’s monthly PTC if a portion of the monthly enrollment premium for a coverage month is unpaid. Finally, the proposed regulations would clarify when an individual is considered to be ineligible for coverage under a State’s Basic Health Program (BHP). The proposed regulations would affect taxpayers who enroll themselves, or enroll a family member, in individual health insurance coverage through a Health Insurance Exchange (Exchange) and may be allowed a PTC for the coverage. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Electronic or written comments must be received by November 1, 2024. A public hearing on this proposed regulation has been scheduled for December 13, 2024, at 10:00 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by November 1, 2024. If no outlines are received by November 1, 2024, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–116787–23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments to the IRS’s public docket. Send paper submissions to: CC:PA:01:PR (REG–116787–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Clara Raymond at (202) 317–4718; concerning submission of comments or outlines, or requests for a public hearing, Vivian Hayes at (202) 317–6901 (not toll-free numbers) or publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 36B of the Internal Revenue Code (Code). Section 36B(h) provides an express delegation of authority for the Secretary of the Treasury or her delegate to prescribe regulations as may be necessary to carry out section 36B, including regulations that provide for the coordination of the credit allowed under 36B with the program for advance payment of the credit under section 1412 of the Affordable Care Act.¹ The proposed regulations are also issued under the express delegation of authority under section 7805 of the Code.

¹ The Affordable Care Act (or ACA) refers to the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010).

Background

I. Definition of “Coverage Month” and Computation of PTC

Section 36B provides a PTC for applicable taxpayers who meet certain eligibility requirements, including that a member of the taxpayer’s family enrolls in a qualified health plan (QHP) through an Exchange for one or more “coverage months.”

Section 1.36B–3(c)(1) provides that a month is a coverage month for an individual if (i) as of the first day of the month, the individual is enrolled in a QHP through an Exchange; (ii) the taxpayer pays the taxpayer’s share of the premium for the individual’s coverage under the plan for the month by the unextended due date for filing the taxpayer’s income tax return for that taxable year, or the full premium for the month is paid by APTC; and (iii) the individual is not eligible for the full calendar month for minimum essential coverage (within the meaning of § 1.36B–2(c)) other than coverage described in section 5000A(f)(1)(C) of the Code (relating to coverage in the individual market).

Section 1.36B–3(d)(1) provides that the PTC (also called the premium assistance amount) for a coverage month is the lesser of (i) the premiums for the month, reduced by any amounts that were refunded, for one or more QHPs in which a taxpayer or a member of the taxpayer’s family enrolls (enrollment premiums); or (ii) the excess of the adjusted monthly premium for the applicable benchmark plan over $\frac{1}{12}$ of the product of a taxpayer’s household income and the applicable percentage for the taxable year. Family is defined in § 1.36B–1(d), and the applicable percentage is defined in § 1.36B–3(g).

Section 36B(f)(3) and § 1.36B–5 require Exchanges to report to QHP enrollees and the IRS certain information, including monthly enrollment premiums, needed to compute the PTC allowed for the enrollee. This information is reported to enrollees on IRS Form 1095–A, *Health Insurance Marketplace Statement*. The Centers for Medicare & Medicaid Services (CMS), part of the Department of Health and Human Services (HHS), is responsible for the Form 1095–A reporting for Exchanges that use the Federal eligibility and enrollment platform (Federally-facilitated Exchanges, or FFEs, and State-based Exchanges on the Federal platform, or SBE–FPs). State Exchanges with their own platforms (State Exchanges) are responsible for the Form 1095–A reporting for individuals who enroll in their State Exchange.

HHS regulations at 45 CFR 156.270(d) implement section 1412(c)(2)(B)(iv)(II) of the Affordable Care Act to require issuers of QHPs to allow a “grace period” for enrollees for whom APTC is paid but who fail to timely pay their share of the premium for the coverage. In general, a QHP issuer must provide a grace period of 3 consecutive months for such an enrollee before the issuer may terminate the enrollee’s coverage. During the first month of the grace period, the QHP issuer must pay all appropriate claims for services rendered, and, during the second and third months of the grace period, the QHP issuer may pend claims.

HHS regulations at 45 CFR 155.400(g) allow issuers to implement a premium payment threshold policy under which issuers can consider enrollees to have paid all amounts due if the enrollees pay an amount sufficient to maintain a percentage of total premium paid out of the total premium owed equal to or greater than a level prescribed by the issuer, provided that the level and the policy are applied in a uniform manner to all enrollees. If an enrollee satisfies these conditions, the issuer may provide coverage even though the full enrollment premium is not paid.

In certain States, issuers also may provide coverage without payment of the full enrollment premium if a State department of insurance prohibits an issuer from terminating QHP coverage during a declared emergency.

For a month for which a taxpayer’s share of the enrollment premium is not paid in full, the current instructions for Form 1095–A require Exchanges to report \$0 on Form 1095–A as the enrollment premium for that month, which signals to the taxpayer and the IRS that no PTC is allowed for that month (non-payment month) because a month in which the premium is not paid in full is not a coverage month. Thus, if an individual is enrolled in a QHP with APTC for a month but does not pay the full amount of the monthly premium as permitted under 45 CFR 156.270(d), 45 CFR 155.400(g), or applicable State law, \$0 should be reported as the enrollment premium for the month, and a PTC is not allowed for that month for the coverage.

CMS has informed the Treasury Department and the IRS that, because CMS is not the entity that collects premium payments from an enrollee, implementing the section 36B definition of coverage month is challenging for CMS in situations in which the taxpayer’s share of the premium is not paid in full but the taxpayer (or the taxpayer’s enrollee) nevertheless may remain enrolled in a QHP with APTC,

if applicable, under 45 CFR 156.270(d), 45 CFR 155.400(g), or applicable State law. An audit by the HHS Office of Inspector General² found that CMS currently reports to FFE and SBE-FP enrollees and the IRS on Form 1095-A the full enrollment premium for the first month of a grace period, notwithstanding that the taxpayer's share of the full premium for that month may never have been paid. Similarly, CMS currently reports to FFE and SBE-FP enrollees and the IRS on Form 1095-A the full enrollment premium (1) for months for which an issuer provides coverage to enrollees who satisfy the premium payment threshold, and (2) for months for which an issuer has been ordered by a State department of insurance, during a declared emergency, not to terminate an enrollee's coverage for the month even though the full premium has not been paid. Consequently, for these two scenarios as well as the grace period scenario, FFEs and SBE-FPs treat a month as a coverage month for which APTC is allowed, and the IRS would not have information to disallow a PTC for the month because the full enrollment premium is reported for the month.

In contrast, some State Exchanges have been reporting \$0 as the enrollment premium for the first month of a grace period and for certain other months for which coverage was provided without the taxpayer's share of the full premium being paid. Consequently, taxpayers in these State Exchanges generally are unable to claim a PTC for those months.

II. Determination of Ineligibility for a State's BHP

As noted in section I of this Background, § 1.36B-3(c)(1) provides that a month is a coverage month for an individual only if, among other requirements, the individual is not eligible for the full calendar month for minimum essential coverage (within the meaning of § 1.36B-2(c)) other than coverage described in section 5000A(f)(1)(C) of the Code (relating to coverage in the individual market). Under section 5000A(f)(1)(A) and § 1.5000A-2, the term "minimum essential coverage" includes coverage under government-sponsored programs such as Medicaid, Children's Health

Insurance Program (CHIP), and a State's BHP.³

Section 1.36B-2(c)(2)(i) provides that, for purposes of determining whether a given month is a coverage month for an individual, an individual generally is considered eligible for government-sponsored minimum essential coverage if the individual meets the criteria for coverage under a government-sponsored program described in section 5000A(f)(1)(A) as of the first day of the first full month the individual may receive benefits under the program.

Section 1.36B-2(c)(2)(v) provides that an individual is treated as not eligible for Medicaid, CHIP, or a similar program for a period of coverage under a QHP if, when the individual enrolls in the QHP, an Exchange determines or considers (within the meaning of 45 CFR 155.302(b)) the individual to be not eligible for Medicaid or CHIP.

Under 42 U.S.C. 18051 and the implementing regulations at 42 CFR part 600, a State is allowed to establish a BHP for eligible individuals. Section 18051(e) provides that a resident of a State cannot be an eligible individual unless the individual is not eligible to enroll in the State's Medicaid program under title XIX of the Social Security Act for benefits that at a minimum consist of the essential health benefits described in 42 U.S.C. 18022(b).

The Treasury Department and the IRS have become aware that the rule in § 1.36B-2(c)(2)(v) relating to an individual being considered ineligible for coverage under a Medicaid, CHIP, or a similar program, is ambiguous as it applies to a State's BHP and should be clarified.

Explanation of Provisions

I. Change to the Definition of "Coverage Month" and Conforming Amendments to PTC Computation

As explained in the Background section of this preamble, a PTC generally is allowed for a taxpayer for months that are coverage months for the taxpayer and other individuals in the taxpayer's family. Further, under § 1.36B-3(c)(1)(ii), a month is not a coverage month for an individual unless the taxpayer pays the taxpayer's full share of the premium for the individual's coverage under the plan for the month by the unextended due date for filing the taxpayer's income tax return for that taxable year, or the full premium for the month is paid by APTC.

Under HHS regulations at 45 CFR 156.270(d), issuers must provide coverage to enrollees for whom APTC is paid in the first month of a grace period, even if the enrollee's share of the premium for the coverage is unpaid. Thus, in that situation, the amount of the total premium paid by APTC is sufficient to allow for enrollees to remain covered. In addition, as noted in the Background section, Exchanges are not consistent in the manner they report enrollment premiums for the first month of a grace period, with some reporting the full premium for the month and others reporting \$0. This inconsistent reporting may lead to disparate treatment among taxpayers, with some being allowed to claim a PTC for the first month of a grace period and others being denied PTC for such a month. The Treasury Department and the IRS are of the view that amending the coverage month rule would promote reporting consistency and thus would achieve more consistent treatment among taxpayers. Moreover, because HHS regulations require issuers to provide coverage for the first month of a grace period to enrollees for whom APTC is paid for that month, it is reasonable to provide consistent treatment for tax purposes. Thus, the proposed regulations would treat the first month of a grace period as a coverage month for PTC purposes if the other coverage month requirements in § 1.36B-3(c) are satisfied. These proposed regulations are consistent with the express delegation of authority in section 36B(h)(1) to provide regulations that provide for coordination of the section 36B credit allowed with the APTC program.

In addition to addressing the first month of a grace period, the proposed regulations would address two other scenarios in which an issuer provides coverage even though the full enrollment premium is not paid as permitted under applicable law. In the first scenario, some issuers provide coverage for a month as long as at least a certain portion of the enrollee's premium for the month is paid, as permitted under CMS's premium payment threshold policy. The Treasury Department and the IRS are of the view that a month for which coverage is provided because a premium payment threshold is met should not fail to be a coverage month solely because the full premium has not been paid. Otherwise, a taxpayer could have monthly PTC disallowed due to a relatively small amount of unpaid premium, resulting in a tax liability that far exceeds the amount of the unpaid premium, for a

² CMS AUTHORIZED HUNDREDS OF MILLIONS OF DOLLARS IN ADVANCED PREMIUM TAX CREDITS ON BEHALF OF ENROLLEES WHO DID NOT MAKE THEIR REQUIRED PREMIUM PAYMENTS (A-02-19-02005), OIG, March 2021, accessed at <https://oig.hhs.gov/oas/reports/region2/21902005.pdf>.

³ Under the authority in section 5000A(f)(1)(A) and § 1.5000A-2(f)(1)(E), coverage through a BHP standard health plan has been recognized as minimum essential coverage. See 42 CFR 600.5.

month in which the amount paid for the coverage met the threshold for the provision of coverage permitted by HHS.

The second scenario involves a State department of insurance prohibiting an issuer from terminating QHP coverage during a declared emergency. In this scenario, if the issuer provides coverage for a month even though the enrollee's portion of the premium has not been fully paid, the Treasury Department and the IRS are of the view that the month should not fail to be a coverage month solely because the full premium has not been paid. This month should be treated as a coverage month because the portion, if any, of the premium that was paid is sufficient to provide coverage to the enrollees during an emergency situation under applicable State law.

Consequently, pursuant to the express delegations of authority in sections 36B(h) and 7805, the proposed regulations would provide that, under these three scenarios, a month may be a coverage month for a taxpayer irrespective of whether the full premium for the month is paid by the unextended due date of the taxpayer's return for the year of coverage. The Treasury Department and the IRS request comments on whether there are other scenarios in which an issuer does not terminate coverage for a month for which the full premium has not been paid and whether such a month should be treated as a coverage month.

The proposed amendment to the definition of "coverage month" in § 1.36B-3(c)(1) would require a conforming change to the calculation of the monthly PTC amount under § 1.36B-3(d)(1)(i), which provides, in effect, that monthly PTC for a coverage month cannot exceed the premiums for the month, reduced by any amounts that were refunded in the same taxable year as the premium liability. If a month in which a portion of the enrollment premiums is unpaid is a coverage month, the premium used to compute the PTC for the month should not include the unpaid portion. Otherwise, a taxpayer could receive a monthly PTC for coverage that exceeds the amount of the premium paid for the coverage, which would result in an undue windfall to the taxpayer. In addition, as noted previously, existing regulations require, in computing monthly PTC, enrollment premiums to be reduced by amounts refunded in the year of coverage. Consistent with the existing rule for computing monthly PTC, the premiums used for computing monthly PTC under the proposed rule also should be reduced by unpaid amounts. Thus, pursuant to the express

delegations of authority in sections 36B(h) and 7805, the proposed regulations would provide that the premium for a month to be considered in determining PTC for an individual's coverage must be reduced by amounts refunded in the same taxable year as the premium liability is incurred and by any portion of the premium that is unpaid as of the unextended due date for filing the taxpayer's income tax return for the taxable year that includes the month. Taxpayers would be instructed to comply with this rule by reducing their enrollment premiums on Form 8962, *Premium Tax Credit (PTC)*, for a coverage month by any amount that remains unpaid as of the unextended due date of their return.

II. Determination of Ineligibility for Medicaid, CHIP, or a Similar Program

As discussed in the Background section of this preamble, § 1.36B-2(c)(2)(v) provides that an individual is treated as not eligible for Medicaid, CHIP, or a similar program for a period of coverage under a QHP if, when the individual enrolls in the QHP, an Exchange determines or assesses the individual to be not eligible for Medicaid or CHIP. The first part of the sentence references "Medicaid, CHIP or similar program," which includes a State's BHP. See 81 FR 91755, 91756. However, the second part of the sentence references only Medicaid or CHIP determinations under 45 CFR 155.302(b) and says nothing about determinations of eligibility under similar programs such as State BHPs. The unintended consequence of this language is that an individual who meets the criteria for coverage under a State BHP could be considered ineligible for the BHP coverage if the Exchange determines that the individual is ineligible for Medicaid or CHIP. Based on the Exchange determination of ineligibility for Medicaid or CHIP, the individual could enroll in a QHP and be allowed a PTC for the QHP coverage.

Consequently, pursuant to the express delegations of authority in sections 36B(h) and 7805, the proposed regulations would clarify that an individual is treated as not eligible for Medicaid, CHIP, or a similar program such as a State BHP, for a period of coverage under a QHP if, when the individual enrolls in the QHP, an Exchange conducts an eligibility determination or, if applicable, eligibility assessment (within the meaning of 45 CFR 155.302(b)) for Medicaid, CHIP, or a similar program and determines or assesses the individual to be not eligible for coverage under the program. Thus, under the

proposed revision, an individual's determination of ineligibility for Medicaid or CHIP would not affect whether the individual is treated as ineligible for BHP coverage for purposes of determining whether a PTC is allowed.

III. Severability

If any provision in this rulemaking is held to be invalid or unenforceable facially, or as applied to any person or circumstance, it shall be severable from the remainder of this rulemaking, and shall not affect the remainder thereof, or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Proposed Applicability Dates

The proposed regulations under §§ 1.36B-2 and 1.36B-3 are proposed to apply for taxable years beginning on or after the first date of the calendar year that begins after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

These proposed regulations do not impose any additional information collection requirements in the form of reporting, recordkeeping requirements, or third-party disclosure statements. Taxpayers who claim PTC on their income tax returns are required to file Form 8962, which is the sole collection of information requirement imposed by section 36B and the regulations under section 36B. The rules in these proposed regulations, if finalized, would require the IRS to revise the instructions for Form 8962. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)), the reporting burden associated with the collection of information for Form 8962 will be

reflected in the PRA submission associated with income tax returns under the OMB control number 1545–0074. To the extent there is a change in burden because of these proposed regulations, the change in burden will be reflected in the updated burden estimates for Form 8962.

III. Regulatory Flexibility Act

When an agency issues a proposed rulemaking, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that “describe[s] the impact of the proposed rule on small entities.” See 5 U.S.C. 603(a). The term “small entities” is defined in 5 U.S.C. 601 to mean “small business,” “small organization,” and “small governmental jurisdiction,” which are also defined in 5 U.S.C. 601. Small business size standards define whether a business is “small” and have been established for types of economic activities, or industry, generally under the North American Industry Classification System (NAICS). See title 13, part 121 of the Code of Federal Regulations (Small Business Size Regulations). The size standards look at various factors, including annual receipts, number of employees, and amount of assets, to determine whether the business is small. See title 13, § 121.201 of the Code of Federal Regulations for the Small Business Size Standards by NAICS Industry.

Section 605 of the RFA provides an exception to the requirement to prepare an initial regulatory flexibility analysis if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The Treasury Department and the IRS hereby certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the majority of the effect of the proposed regulations falls on individual taxpayers, and entities will experience only small changes.

Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may

result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

E.O. 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the E.O. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the E.O.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble in the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including the economic impact of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing is being held on December 13, 2024, beginning at 10:00 a.m. ET, in the Auditorium at the Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed as well as the time to be devoted to each topic by November 1, 2024. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS

will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by November 1, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have their name added to the building access list. The subject line of the email must contain the regulation number REG–116787–23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–116787–23.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–116787–23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–116787–23.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have their name added to the building access list. The subject line of the email must contain the regulation number REG–116787–23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing in Person for REG–116787–23. Requests to attend the public hearing must be received by 5:00 p.m. ET on December 11, 2024.

Individuals who want to attend the public hearing telephonically without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–116787–23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–116787–23. Requests to attend the public hearing must be received by 5:00 p.m. ET on December 11, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by

telephone at (202) 317-6901 (not a toll-free number) by at least December 10, 2024.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these proposed regulations is Clara L. Raymond of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order for §§ 1.36B-1 through 1.36B-3, and 1.36B-6, and revising the entries for §§ 1.36B-0, 1.36B-4, and 1.36B-5 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.36B-0 also issued under 26 U.S.C. 36B(h).

Section 1.36B-1 also issued under 26 U.S.C. 36B(h).

Section 1.36B-2 also issued under 26 U.S.C. 36B(h).

Section 1.36B-3 also issued under 26 U.S.C. 36B(h).

Section 1.36B-4 also issued under 26 U.S.C. 36B(h).

Section 1.36B-5 also issued under 26 U.S.C. 36B(h).

Section 1.36B-6 also issued under 26 U.S.C. 36B(h).

* * * * *

■ **Par. 2.** Section 1.36B-2 is amended by:

- 1. Revising the first sentence in paragraph (c)(2)(v);
- 2. Revising paragraph (e)(1); and
- 3. Adding paragraph (e)(6).

The revisions and addition read as follows:

§ 1.36B-2 Eligibility for premium tax credit.

* * * * *

(c) * * *

(2) * * *

(v) * * *

An individual is treated as not eligible for Medicaid, CHIP, or a similar program such as a Basic Health Program, for a period of coverage under a qualified health plan if, when the individual enrolls in the qualified health plan, an Exchange conducts an eligibility determination or, if applicable, eligibility assessment (within the meaning of 45 CFR 155.302(b)) for Medicaid, CHIP, or a similar program and determines or assesses the individual to be not eligible for coverage under the program. * * *

* * * * *

(e) * * *

(1) Except as provided in paragraphs (e)(2) through (6) of this section, this section applies to taxable years ending after December 31, 2013.

* * * * *

(6) The first sentence of paragraph (c)(2)(v) of this section applies to taxable years beginning on or after [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**]. The first sentence of paragraph (c)(2)(v) of this section, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years ending after December 31, 2013, and beginning before [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**].

Par. 3. Section 1.36B-3 is amended by:

- 1. Revising paragraph (c)(1)(ii);
- 2. Redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(5) and (c)(6), respectively, and adding new paragraph (c)(4);
- 3. Revising paragraph (d)(1)(i);
- 4. Revising paragraph (n).

The revisions and additions read as follows:

§ 1.36B-3 Computing the premium assistance credit amount.

* * * * *

(c) * * *

(1) * * *

(ii) The taxpayer pays the taxpayer's share of the premium for the individual's coverage under the plan for the month by the unextended due date for filing the taxpayer's income tax return for that taxable year, the full premium for the month is paid by advance credit payments, or the amount of the premium paid (including by advance credit payments) for the month is sufficient to avoid termination of the

individual's coverage for that month under one of the scenarios described in paragraph (c)(4) of this section; and

* * * * *

(4) *Scenarios for payments sufficient to avoid coverage termination.* The scenarios under which the amount of the premium paid (including by advance credit payments) for the month is sufficient to avoid termination of an individual's coverage for that month under paragraph (c)(1)(ii) of this section are the following:

(i) The first month of a grace period described in 45 CFR 156.270(d) for the individual.

(ii) A month for which a premium payment threshold under 45 CFR 155.400(g) has been met and for which month the issuer of the individual's qualified health plan provides coverage.

(iii) A month for which a State department of insurance has, during a declared emergency, issued an order prohibiting the issuer of the individual's qualified health plan from terminating the individual's coverage for the month irrespective of whether the full premium for the month is made.

* * * * *

(d) * * *

(1) * * *

(i) The enrollment premiums, which are the premiums for the month for one or more qualified health plans in which a taxpayer or a member of the taxpayer's family enrolls, reduced by any amounts—

(A) Refunded in the same taxable year as the premium liability is incurred; or

(B) Unpaid as of the unextended due date for filing the taxpayer's income tax return for the taxable year that includes the month, or

* * * * *

(n) *Applicability dates.* (1) Except as provided in paragraphs (n)(2) through (4) of this section, this section applies to taxable years ending after December 31, 2013.

(2) Paragraphs (d)(1)(i) and (d)(2) of this section apply to taxable years beginning after December 31, 2016. Paragraph (f) of this section applies to taxable years beginning after December 31, 2018. Paragraphs (d)(1) and (d)(2) of § 1.36B-3, as contained in 26 CFR part I edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraph (f) of § 1.36B-3, as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2019.

(3) Paragraphs (c)(4) through (6) of this section apply to taxable years

beginning on or after [insert the first date of the calendar year that begins after the date of publication of final regulations in the **Federal Register**]. Paragraph (c)(4) of this section, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years beginning after December 31, 2016, and beginning before [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**]. Paragraph (c)(5) of this section, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years ending after December 31, 2013, and beginning before [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**].

(4) Paragraph (d)(1)(i) of this section applies to taxable years beginning on or after [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**]. Paragraph (d)(1)(i) of § 1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraph (d)(1)(i) of § 1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2022, applies to taxable years beginning after December 31, 2016, and beginning before January 1, 2023. Paragraph (d)(1)(i) of § 1.36B–3, as contained in 26 CFR part I edition revised as of April 1, 2024, applies to taxable years beginning after December 31, 2022, and beginning before [insert the first date of the calendar year that begins after the date of publication of the final regulations in the **Federal Register**].

Douglas W. O'Donnell,
Deputy Commissioner.

[FR Doc. 2024–20758 Filed 9–16–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106851–21]

RIN 1545–BQ95

Tribal General Welfare Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations regarding the

exclusion from gross income of certain Tribal general welfare benefits. The proposed regulations address the requirements that would apply to determine whether the benefits that an Indian Tribal government program provides qualify as Tribal general welfare benefits. These proposed regulations would affect Indian Tribal governments, agencies or instrumentalities of such governments, Federally-recognized Tribes, members of such Tribes, such members' spouses and dependents, and other Tribal program participants. This document also requests comments on certain provisions and provides a notice of a public hearing on the proposed regulations that will be in addition to Tribal consultation on the proposed regulations.

DATES:

Comments: Electronic or written comments on this proposed rule from the public must be received by December 16, 2024.

Public Hearing: The public hearing is scheduled to be held on January 13, 2025, at 10 a.m. Eastern time (ET). Requests to speak and outlines of topics to be discussed at the public hearing must be received by December 16, 2024. If no outlines are received by December 16, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on January 9, 2025. Requests for special assistance during the hearing must be received by 5 p.m. ET on January 8, 2025. See the Comments and Public Hearing section of the **SUPPLEMENTARY INFORMATION** for additional information.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG–106851–21) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish any comments to the IRS's public docket. Send paper submissions to: CC:PA:PR:01 (REG–106851–21), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Jonathan A. Dunlap of the Office of Associate Chief Counsel (Income Tax and Accounting), (202) 317–4718 (not a toll-free number); concerning submissions of comments or outlines,

the hearing, or any questions to attend the hearing by teleconferencing, Publication and Regulations Section at (202) 317–6901 (not a toll-free number) or preferably by email to publichearings@irs.gov. If emailing, please include the following information in the subject line: Attend, Testify, or Question and REG–106851–21.

SUPPLEMENTARY INFORMATION:

Authority

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 139E of the Internal Revenue Code (Code). Section 139E(c)(3) provides an express delegation of authority for the Secretary of the Treasury or her delegate (Secretary) to, “in consultation with the Tribal Advisory Committee (as established under section 3(a) of the Tribal General Welfare Exclusion Act of 2014), establish guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs.” The proposed regulations are also issued under the express delegation of authority under section 7805(a) of the Code.

Background

This notice of proposed rulemaking contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to implement section 139E of the Internal Revenue Code (Code).

Section 61 of the Code provides that, except as otherwise provided by law, the term “gross income” means all income from whatever source derived. The term “income” is broadly defined as “instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion.” *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). As a general rule, exclusions from income are construed narrowly, and taxpayers must bring themselves within the clear scope of the exclusion for the exclusion to apply. *Commissioner v. Schleier*, 515 U.S. 323, 328–329 (1995). Tribal members are subject to the same requirement to pay Federal income taxes as non-Tribal members, unless exempted by a treaty or agreement between the United States and the Tribal member's Tribe or an Act of Congress dealing with Indian affairs. *Squire v. Capoean*, 351 U.S. 1, 6 (1956).

Generally, if the provision of a benefit satisfies the requirements of section 139E (discussed in part IV of this Background), section 139E will apply to exclude the value of the benefit from the

recipient's gross income. If section 139E does not apply to exclude a benefit from a recipient's gross income, the benefit may, depending on the facts and circumstances, separately qualify for exclusion from the recipient's gross income under another Code provision or the administrative general welfare exclusion (discussed in part I of this Background), which pre-dates the enactment of section 139E. *See* Notice 2015-34 (2015-18 I.R.B. 942), discussed in part V of this Background.

I. Administrative General Welfare Exclusion

The IRS generally has determined that payments made to or on behalf of individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not includible in an individual recipient's Federal gross income; this concept is referred to in this preamble as the "administrative general welfare exclusion." *See, e.g.,* Rev. Rul. 78-170, 1978-1 C.B. 24 (concluding that amounts paid under the laws of the State of Ohio to low-income elderly and disabled persons to help alleviate their cost of winter energy consumption are made for the promotion of general welfare, and are not includible in the recipients' gross income for Federal income tax purposes); *see also* Rev. Rul. 76-395, 1976-2 C.B. 16 (applying the general welfare exclusion to home rehabilitation grants to low-income families to correct substandard conditions).

To qualify under the administrative general welfare exclusion, payments must (1) be paid from a governmental fund, (2) be for the promotion of the general welfare (that is, based on the need of the individual or family receiving such payments), and (3) not represent compensation for services absent a specific Federal income tax exclusion. *See* Notice 2023-56, 2023-38 I.R.B. 824.

Payments that are based on some criteria other than individual or family need do not qualify for the administrative general welfare exclusion. *Compare* Rev. Rul. 76-395, 1976-2 C.B. 16 (home rehabilitation grants received by low-income homeowners residing in a defined area of a city under the city's community development program funded under the Housing and Community Development Act of 1974 are in the nature of general welfare and are not includible in their gross income) *with* Rev. Rul. 76-131, 1976-1 C.B. 16 (payments made by the State of Alaska to individuals at least 65 years of age who have maintained an Alaska domicile for at least 25 years to

encourage them to continue their residence in the State did not qualify under the general welfare exclusion because the payments were made to residents regardless of financial status, health, educational background, or employment status).

The administrative general welfare exclusion does not generally apply to permit a business to exclude payments from gross income because such payments are not based on individual or family need. *See Bailey v. Commissioner*, 88 T.C. 1293, 1300-1301 (1987), *acq.* 1989-2 C.B. 1; Revenue Ruling 2005-46 (2005-2 C.B. 120).

II. Application of the Administrative General Welfare Exclusion to Indian Tribal Governments

Indian Tribal governments have a unique legal status. They have sovereignty that pre-dates the United States and therefore have a government-to-government relationship with the United States. Indian Tribal governments have developed a broad range of programs to address their unique social, cultural, and economic issues. The administrative general welfare exclusion applies to benefits provided by Indian Tribal governments no less favorably than it applies to benefits provided by Federal, State, or local governments. Thus, benefits provided by Indian Tribal governments qualify for the administrative general welfare exclusion if the benefits are (1) made pursuant to a governmental program of the Tribe; (2) for the promotion of general welfare (that is, based on individual or family need); and (3) not compensation for services.

III. Revenue Procedure 2014-35

In 2014, the Treasury Department and the IRS issued Revenue Procedure 2014-35 (2014-26 I.R.B. 1110),¹ which provides safe harbors under which the IRS conclusively presumes that the individual need requirement of the administrative general welfare exclusion is met for benefits provided under Indian Tribal governmental programs that meet the safe harbor requirements. The revenue procedure provides that the IRS will not assert that recipients of benefits under a safe harbor must include the value of those benefits in gross income or that the benefits are subject to the information reporting requirements of section 6041 of the Code. The safe harbors apply if the following requirements are met: (1) the

benefit is provided pursuant to a specific Indian Tribal government program, (2) the program has written guidelines specifying how the individual qualifies for the benefit; (3) the benefit is available to any Tribal member and certain other individuals who satisfy the program's guidelines; (4) the program does not discriminate in favor of members of the governing body; (5) the benefit is not lavish or extravagant under the circumstances, and (6) the benefit is not compensation for services. *See* section 5.02(1) of Revenue Procedure 2014-35. Categories of qualifying benefits include housing, education, elder and disabled person care, and cultural activities. *See* section 5.02(2) of Revenue Procedure 2014-35. In addition, nominal cash honoraria and items of cultural significance that are not lavish or extravagant provided to religious or spiritual officials or leaders in connection with their participation in cultural, religious, and social events, are not treated as compensation for services (and therefore are not gross income) under the revenue procedure. *See* section 5.03 of Revenue Procedure 2014-35.

IV. The Tribal General Welfare Exclusion Act of 2014

On August 2, 2013, H.R. 3043, 113th Cong. (2013), whose short title was the Tribal General Welfare Exclusion Act of 2013, was introduced in the United States House of Representatives and referred to the Committee on Ways and Means. On that same date, an identical bill was introduced in the United States Senate and referred to the Committee on Finance. On September 16, 2014, after its short title was revised to the "Tribal General Welfare Exclusion Act of 2014," H.R. 3043 was passed by the House of Representatives after a floor debate (House Debate). *See* Cong. Rec. H7599-7603 (September 16, 2014). On September 17, 2014, after being received by the Senate, H.R.3043 was the subject of a colloquy (Senate Colloquy). *See* Cong. Rec. S5686-5687 (September 17, 2014). On September 18, 2024, H.R. 3043 was passed by the Senate by unanimous consent. *See* Cong. Rec. S5862 (September 18, 2014). On September 26, 2014, the President of the United States approved the United States Congress's enactment of the Tribal General Welfare Exclusion Act of 2014 (Act), Public Law 113-168, 128 Stat. 1883 (2014).

The Act, among other things, amended the Code by adding section 139E. Under section 139E, gross income does not include the value of any "Indian general welfare benefit," which this notice of proposed rulemaking

¹ Revenue Procedure 2014-35 was preceded by Notice 2012-75 (2012-51 I.R.B. 715). The IRS received over 40 comments in response to Notice 2012-75, which informed the drafting of Revenue Procedure 2014-35.

refers to as a “Tribal General Welfare Benefit.” Section 139E(b) defines a Tribal general welfare benefit as any payment made or services provided to or on behalf of a member of a Tribe (or any spouse or dependent of such a member) pursuant to an Indian Tribal government program, but only if: (1) the program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the Tribe, and (2) the benefits provided under such program are (A) available to any Tribal member who meets such guidelines, (B) for the promotion of general welfare, (C) not lavish or extravagant, and (D) not compensation for services. Further, section 139E(c)(5) provides that any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of Tribal culture “shall not be treated as compensation for services.”

Section 2(c) of the Act provides that ambiguities in section 139E are to be resolved in favor of Indian Tribal governments. Section 2(c) of the Act also requires that deference be given to Indian Tribal governments for the programs administered and authorized by the Tribe to benefit the general welfare of the Tribal community.

Section 2(d)(1) of the Act provides that section 139E shall apply to taxable years for which the period of limitation on refund or credit under section 6511 of the Code of 1986 has not expired. Section 2(d)(2) of the Act provides that if the period of limitation on a credit or refund resulting from the enactment of section 139E expires before the end of the 1-year period beginning on the date of the enactment of the Act, refund or credit of such overpayment (to the extent attributable to such amendments) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

Section 3 of the Act requires the Secretary of the Treasury to establish a Tribal Advisory Committee. The Department of the Treasury Tribal Advisory Committee (TTAC) held its inaugural meeting on June 20, 2019. Under section 3(b) of the Act, the TTAC’s mandate is to advise the Secretary of the Treasury on matters relating to the taxation of Indians, and the Secretary of the Treasury is required to consult with the TTAC to establish and require training and education for internal revenue field agents who administer and enforce internal revenue laws. This includes (A) training and education with respect to Federal Indian law and the Federal Government’s

unique legal treaty and trust relationship with Indian Tribal governments, and (B) training of such internal revenue field agents, and provision of training and technical assistance to Tribal financial officers, about implementation of the Act and the amendments made by the Act.

Section 4(a) of the Act requires the Secretary of the Treasury to temporarily suspend “all audits and examinations of Indian Tribal governments and members of Tribes (or any spouse or dependent of such a member), to the extent such an audit or examination relates to the exclusion of a payment or benefit from an Indian Tribal government under the general welfare exclusion” until the training and education described above is completed. Section 4(a) further provides that the period of limitation under section 6501 of the Code is suspended during the period of suspension.

V. Notice 2015–34

Following the addition of section 139E to the Code, the IRS published Notice 2015–34 (2015–18 I.R.B. 942), providing guidance to taxpayers regarding the effect of section 139E on Revenue Procedure 2014–35. Notice 2015–34 provides that section 139E codifies (but does not supplant) the administrative general welfare exclusion for certain benefits provided under Indian Tribal government programs. Notice 2015–34 provides that taxpayers can rely on Revenue Procedure 2014–35 for the safe harbors under which certain benefits provided by Indian Tribal government programs may be excluded from gross income under the administrative general welfare exclusion. Additionally, Notice 2015–34 requested comments on (1) what guidelines may be helpful to Indian Tribal governments to determine whether benefits are lavish or extravagant under section 139E(b); (2) what Tribal customs or government practices may establish an Indian Tribal government program administered through specific guidelines under section 139E(b)(1) and (c)(4) and how such programs may be identified; and (3) how items of cultural significance, cash honoraria, and cultural or ceremonial activities for the transmission of Tribal culture under section 139E(c)(5) should be defined.

VI. TTAC Report and Tribal Consultations on Section 139E

Members of the TTAC formed a Subcommittee on the Act’s General Welfare Exclusion (GWE Subcommittee) in 2019 to provide the TTAC with technical expertise on recommendations

for the implementation of the Act. On June 16, 2021, the GWE Subcommittee submitted to the TTAC a report (TTAC Report) containing the GWE Subcommittee’s interpretation of the core principles underlying section 139E, and an Appendix containing draft proposed regulations interpreting section 139E (TTAC draft proposed regulations), consistent with those core principles. On October 26, 2022, the TTAC formally recommended and approved the TTAC Report to be submitted for the record and published for Tribal comment.

The Treasury Department sent a Tribal consultation letter, dated October 27, 2022 (Dear Tribal Leader Letter), to Tribal leaders to request consultation on the Act and the TTAC Report. The Dear Tribal Leader Letter announced consultation meetings to be held on December 14, 15, and 16, 2022 (December 2022 Consultations), to discuss the Act and the TTAC Report. The Dear Tribal Leader Letter also requested responses to certain questions related to the interpretation of particular provisions of section 139E, as well as comments on the TTAC Report. In response to the Dear Tribal Leader Letter, and after the December 2022 Consultations, the Treasury Department received 65 written comments from Tribes and two Tribal organizations (collectively, Tribal Comments).

The Tribal Comments were broadly supportive of the recommendations in the TTAC Report,² including the TTAC draft proposed regulations. In general, the Tribal Comments emphasized that the Act, particularly section 2(c) of the Act, requires the Treasury Department to recognize the sovereignty of Tribes by granting broad deference to Indian Tribal governments in the design and implementation of their general welfare programs, as well as with respect to any ambiguities in the statute. Deference to Indian Tribal governments was a guiding principle in the Tribal Comments addressing each of the questions for which the Treasury Department requested comment. For example, many Tribal Comments stated that any Treasury Department and IRS guidance imposing specific requirements for a general welfare program, such as what constitutes “the promotion of the general welfare,” what is a “lavish or extravagant” benefit, or what are “cultural or ceremonial activities,” would infringe upon Indian Tribal sovereignty. Many Tribal

² However, a few Tribal Comments argued that Congress has not specifically directed the Treasury Department and the IRS to publish regulations under section 139E.

Comments urged that section 2(c) of the Act be expressly cited in the proposed regulations.

Another area of significant concern raised in the Tribal Comments was ensuring that the regulations under section 139E do not presumptively treat benefits as outside the scope of section 139E solely because the benefits are provided to all eligible recipients in an equal amount, or that the benefits are funded from gaming revenues. This concern was primarily raised in relation to amounts that are set aside and paid from net gaming revenues to provide for the general welfare of the Indian Tribe and its members. *See* 25 U.S.C. 2710(b).

Finally, the Tribal Comments addressed various other issues, including the effective date of the proposed regulations, training of IRS agents, and coordination with other Federal agencies. After considering these and other Tribal Comments and the TTAC Report, and after consultation with the TTAC and the GWE Subcommittee, the Treasury Department and the IRS propose to adopt new § 1.139E–1 to provide guidance under section 139E (proposed § 1.139E–1). The following Explanation of Provisions discusses the Tribal Comments in more detail in relation to each proposed provision in proposed § 1.139E–1.

Explanation of Provisions

The proposed regulations would provide that the gross income of a Tribal program participant does not include the value of any Tribal general welfare benefit provided by an Indian Tribal government program.

The provisions of proposed § 1.139E–1 would provide (1) definitions of terms used in section 139E and proposed § 1.139E–1 (*see* proposed § 1.139E–1(b)); (2) requirements for a program to qualify as an “Indian Tribal Government Program” (*see* proposed § 1.139E–1(c)); (3) requirements for a benefit to qualify as a “Tribal General Welfare Benefit” (*see* proposed § 1.139E–1(d)); (4) special rules related to cultural or ceremonial activities (*see* proposed § 1.139E–1(e)); (5) clarification of the audit suspension required by section 4(a) of the Act (proposed § 1.139E–1(f)); and (6) the proposed date of applicability of the final regulations (*see* proposed § 1.139E–1(g)). The Treasury Department and the IRS will publish final regulations under section 139E after consideration of oral and written comments received in connection with Tribal consultation on these proposed regulations, consideration of any other comments received in response to the proposed regulations, and further

consultation with the TTAC, including through the GWE Subcommittee.

I. Section 139E Definitions

Section 139E(a) provides that gross income does not include the value of any Tribal general welfare benefit. Section 139E(b) defines a Tribal general welfare benefit, in relevant part, as any payment made or services provided to or on behalf of a member of a Tribe (or any spouse or dependent of such a member) pursuant to a program that is established by an Indian Tribal government and that satisfies specified requirements. Proposed § 1.139E–1(b) would define an Indian Tribal government, a Tribe, and the individuals, including a Tribal member, spouse, and dependent, who may be determined by the Indian Tribal government to be eligible for a general welfare benefit under section 139E.

A. Definition of Indian Tribal Government

Section 139E(c)(1) provides that the term “Indian Tribal government” includes any agencies or instrumentalities of an Indian Tribal government and any Alaska Native regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 *et seq.*) (Alaska Native Corporations). Revenue Procedure 2014–35 provides that the term “Indian Tribal government” has the same meaning as in section 7701(a)(40)(A) but for purposes of the revenue procedure includes agencies or instrumentalities of the Indian Tribal government. The TTAC Report and the Tribal Comments did not provide any recommendations on the definition of Indian Tribal government and did not specifically address Alaska Native Corporations.

If used in a provision of the Code and not otherwise distinctly expressed or manifestly incompatible with the intent thereof, section 7701(a)(40)(A) defines the term “Indian Tribal government” to mean the governing body of any Tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise governmental functions. Under the Federally Recognized Indian Tribe List Act of 1994, Public Law 103–454, 108 Stat. 4791 (List Act), the Secretary of the Interior is required to publish annually a list of all Federally-recognized Tribes. In Revenue Procedure 2008–55 (2008–39 I.R.B. 768), after consultation with the Department of Interior (DOI), the Treasury Department and the IRS

determined that the Indian Tribal entities that appear on the current or future lists of Federally-recognized Tribes published annually under the List Act by the DOI, Bureau of Indian Affairs, are designated as Indian Tribal governments for purposes of section 7701(a)(40). *See* 89 FR 944 (January 8, 2024) for the most current list published by the DOI, Bureau of Indian Affairs.

Proposed § 1.139E–1(b)(4) would define the term “Indian Tribal Government” by reference to section 7701(a)(40). In addition, in accordance with section 139E(c)(1), the definition of Indian Tribal government for purposes of proposed § 1.139E–1(b)(4) also would include agencies and instrumentalities of the Indian Tribal government. This definition is consistent with Revenue Procedure 2014–35.

Although the definition of Indian Tribal government under section 139E(c)(1) includes Alaska Native Corporations, these proposed regulations would not include Alaska Native Corporations in the definition of Indian Tribal government for purposes of these rules and instead reserve proposed § 1.139E–2 for the rules to apply section 139E to benefits provided by Alaska Native Corporations. The Treasury Department and the IRS intend on holding consultation before issuing future guidance on issues related to the application of section 139E to benefits provided by Alaska Native Corporations.

B. Definition of Tribe

Section 139E does not define the term “Indian Tribe,” but section 4(c)(2) of the Act defines it by cross-reference to that term as defined in section 45A(c)(6) of the Code. Revenue Procedure 2014–35 also defines “Indian Tribe” by cross-reference to section 45A(c)(6). The TTAC Report and the Tribal Comments did not provide any recommendations on the definition of “Indian Tribe,” which, for purposes of these proposed regulations, is referred to as simply “Tribe.”

Section 45A relates to the Indian employment credit, which was applicable for taxable years prior to January 1, 2022. Section 45A(c)(6) defines “Indian Tribe” to mean any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, ANCSA that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Proposed § 1.139E–1(b)(7) generally would define “Tribe” using the

definition of Indian Tribe in section 45A(c)(6). However, for ease of readability and to prevent confusion arising from citing to an expired Code provision, the proposed regulations would recite the language of section 45A(c)(6) rather than incorporating the definition by cross-reference. As noted, proposed § 1.139E–2 is reserved because the Treasury Department and the IRS intend to issue future guidance under section 139E applicable to benefits provided by Alaska Native Corporations. Accordingly, the proposed regulations would exclude section 45A(c)(6)’s reference to Alaska Native regional and village corporations as defined in and established pursuant to ANCSA for purposes of these rules.

C. Definition of Tribal Program Participant

Section 139E(b) provides that a Tribal general welfare benefit means any payment made or services provided to or on behalf of a member of the Tribe (or any spouse or dependent of such a member) pursuant to a program that satisfies specified requirements. Revenue Procedure 2014–35 allows benefits to be provided to a member of the Tribe, as well as a “qualified nonmember,” meaning a spouse, former spouse, legally recognized domestic partner or former domestic partner, ancestor, descendant, or dependent of a member of a Tribe.

The TTAC Report and many Tribal Comments recommend that the proposed regulations provide that individuals eligible for benefits not be limited to Tribal members and their spouses and dependents, instead supporting the use of the more expansive term “qualified nonmember” from Revenue Procedure 2014–35. The TTAC Report and many Tribal Comments state that using this more expansive definition of “qualified nonmember” would be consistent with the House Debate and Senate Colloquy that explain the Act, and that section 139E should be viewed no less favorably than Revenue Procedure 2014–35. Moreover, several Tribal Comments suggest that the language “to or on behalf of” in section 139E(b) is ambiguous and thus supports the proposed regulations adopting the definition of “qualified nonmember” from Revenue Procedure 2014–35. In addition, the TTAC Report explains that depending on Tribal culture, custom, or tradition, a member of a Tribe may have obligations to care for extended family, and that existing Tribal general welfare programs may provide assistance to these extended family members.

The Treasury Department and the IRS have considered the TTAC Report and the Tribal Comments and agree that an expansive definition of eligible individuals is appropriate. Accordingly, proposed § 1.139E–1(b)(8) would define the term “Tribal Program Participant” to mean a Tribal member, spouse of a Tribal member (including a spouse of a Tribal member within the meaning of § 301.7701–18, or a spouse of a Tribal member under applicable Tribal law), dependent of a Tribal member, or other individual who has been determined by the Indian Tribal government to be eligible for a Tribal general welfare benefit because such individual is, with respect to a Tribal member, an ancestor, descendant, former spouse, widow or widower, or legally recognized domestic partner or former domestic partner. This definition is intended to encompass the categories of “qualified nonmember” that are covered by Revenue Procedure 2014–35, with the clarification that a spouse may be a spouse under applicable Tribal law.

The Treasury Department and the IRS note that the phrase “on behalf of” in section 139E(b) does not make the section 139E exclusion applicable to the direct recipient of a payment which was made by the Indian Tribal government “on behalf of” the Tribal program participant. For example, a Tribal program participant who receives a Tribal general welfare benefit from an Indian Tribal government program to provide rental assistance can exclude the payment from the Tribal program participant’s gross income under section 139E regardless of whether the assistance is paid directly to the Tribal program participant or paid to the landlord on behalf of the Tribal program participant. In either case, however, section 139E does not apply to permit the landlord to exclude the rental assistance payment from the landlord’s gross income.

D. Definition of Tribal Member

Section 139E does not define who is a “member of an Indian Tribe” or “Tribal member.” Revenue Procedure 2014–35 defines who is a member of a Tribe by cross-reference to 25 CFR 290.2, which defines a member of a Tribe as an individual who meets the requirements established by applicable Tribal law for enrollment in the Tribe and (1) is listed on the Tribal rolls of that Tribe if such rolls are kept, or (2) is recognized as a member by the Tribal governing body if Tribal rolls are not kept. The TTAC Report and the Tribal Comments did not provide any recommendations on the definition of a member of a Tribe.

Proposed § 1.139E–1(b)(9) would define the term “Tribal Member” in a manner similar to Revenue Procedure 2014–35’s definition of “member of an Indian Tribe.” The proposed regulations would adopt the same definition but, for ease of readability, would incorporate the language from 25 CFR 290.2 rather than providing a cross-reference. Thus, the proposed regulations would define “Tribal Member” as an individual who is a member or citizen of the Tribe that establishes or maintains the Indian Tribal government program because the individual meets the requirements established by applicable Tribal law for enrollment in the Tribe and (1) is listed on the Tribal rolls of that Tribe if such rolls are kept, or (2) is recognized as a member by the Tribal governing body if Tribal rolls are not kept. In addition, the Treasury Department and the IRS are aware that some Tribes temporarily close their rolls for enrollment or do not enroll children until they reach a certain age. These Tribes may provide benefits to an individual on the basis that the individual may be eligible for benefits, even though not formally a Tribal member. In particular, Tribes may provide benefits to an Indian child under the Indian Child Welfare Act of 1978, Public Law 95–608, 92 Stat. 3069 (1978), codified at 25 U.S.C. 1903(4). The Indian Child Welfare Act defines “Indian child” as any unmarried person who is under age eighteen and is either (a) a member of a Tribe or (b) is eligible for membership in a Tribe and is the biological child of a member of a Tribe. To ensure that Indian Tribal governments may provide general welfare benefits to an Indian child under section 139E, the proposed regulations also would include in the definition of Tribal member an “Indian child” as defined in 25 U.S.C. 1903.

The Treasury Department and the IRS recognize that an Indian Tribal government generally develops programs with the intention of providing general welfare benefits to or for the benefit of its own Tribal members. The Treasury Department and the IRS interpret section 139E(b) as providing a relationship nexus between the Indian Tribal government providing the general welfare benefit and the individual receiving the benefit. Thus, the proposed regulations would define the term Tribal member to mean a member of the Tribe that establishes or maintains the Indian Tribal government program. However, solely for purposes of the rule in section 139E(c)(5) relating to benefits provided for participation in ceremonial or cultural activities, proposed § 1.139E–1(b)(8)(ii) would

provide that the recipient of such benefits may be a member of a Tribe that is different from the Tribe that establishes or maintains the program.

E. Definition of Spouse

Section 139E does not define the term “spouse,” nor does Revenue Procedure 2014–35. The TTAC Report and the Tribal Comments did not provide any recommendations on the definition of spouse for purposes of section 139E.

Section 301.7701–18(a) of the Procedure and Administration Regulations (26 CFR part 301) provides that, for Federal tax purposes, the term spouse means an individual lawfully married to another individual. Section 301.7701–18(b) generally provides that a marriage of two individuals is recognized for Federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of domicile. Section 301.7701–18(a) does not specifically refer to a marriage recognized under Tribal law because Tribal lands are not states, possessions or territories of the United States or foreign jurisdictions. However, the term “spouse” would include individuals married under Tribal law if the marriage would be recognized under the laws of any state, possession, or territory of the United States. See also 1 U.S.C. 7.

Because § 301.7701–18(a) defines spouse for Federal tax purposes, that definition applies for purposes of section 139E and would apply by default under proposed regulations. However, as noted in part I.C. of this Explanation of Provisions section, the proposed regulations would include in the definition of Tribal program participant the spouse of a Tribal member, as determined under applicable Tribal law, whether or not recognized under § 301.7701–18(a) and 1 U.S.C. 7.

F. Definition of Dependent

Section 139E(c)(2) defines the term “dependent” to mean a dependent as defined in section 152 of the Code, determined without regard to section 152(b)(1), (b)(2), and (d)(1)(B). Revenue Procedure 2014–35 does not define dependent, and the TTAC Report and the Tribal Comments did not provide any recommendations on the definition of dependent for purposes of section 139E.

Section 152(a) defines dependent to mean an individual who is a qualifying child or qualifying relative of the taxpayer. Section 152(b) provides that an individual who is a qualifying child or a qualifying relative of a taxpayer is

not a taxpayer’s dependent in certain circumstances. Section 152(b)(1) provides that if an individual is a dependent of a taxpayer, that individual is treated as having no dependents. Section 152(b)(2) provides that, to be a dependent of a taxpayer, an individual must not have filed a joint return with his or her spouse. Section 152(d)(1)(B) provides that qualifying relative does not include an individual whose income is not less than the exemption amount set forth in section 151(d) of the Code.³ For purposes of section 139E, an individual who for the year is a dependent of a taxpayer who is him or herself a dependent, who files a joint return with the individual’s spouse, or whose income is not less than the applicable limit for section 152(d)(1)(B) (\$5,050 for 2024) is a dependent of a Tribal member if the other requirements of section 152 are satisfied, pursuant to section 139E(c)(2).

Proposed § 1.139E–1(b)(10) would define the term “dependent” in accordance with the definition in section 139E(c)(2). However, for ease of readability, the proposed regulations would not cite the specific Code sections, but instead would describe the rules for determining who is a dependent under section 152 without regard to section 152(b)(1), (b)(2), and (d)(1)(B).

II. Indian Tribal Government Program

Under section 139E(b), a benefit is a Tribal general welfare benefit if it meets certain requirements and is provided pursuant to an Indian Tribal government program, but only if the program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the Tribe. Section 139E(c)(4) provides that a program will not fail to be treated as an Indian Tribal government program solely by reason of the program being established by Tribal custom or government practice. Revenue Procedure 2014–35 provides that, to qualify for the safe harbors provided therein, there must be a specific Tribal program, the program must have written guidelines specifying how an individual qualifies for the benefit, and the program cannot discriminate in favor of members of the governing body.

Some Tribal Comments suggest that programs established by Tribal custom or government practice without written

³ For taxable years in which the exemption amount is zero, the section 151(d) exemption amount is generally the inflation-adjusted section 152(d)(1)(B) exemption amount in the annual revenue procedure setting forth inflation-adjusted items that is published in the Internal Revenue Bulletin.

documentation (that is, programs established under oral and unwritten customs or traditions) should satisfy the statutory requirement in section 139E(b)(1) that the program be administered under specified guidelines. These Tribal Comments recommend that the proposed regulations allow Indian Tribal governments to demonstrate the existence of “specified guidelines” for these programs through statements, affidavits, or declarations that describe how the Tribe has operated the program in the past. Other Tribal Comments argue that section 139E(b)(1) neither specifies who establishes the “specified guidelines” nor defines the term “specified,” and that the proposed regulations should presume that a program administered by or pursuant to Tribal resolution or other action by a Tribe’s governing body is “administered under specified guidelines.” The TTAC Report and the Tribal Comments did not specifically address the requirement that the program not discriminate in favor of members of the governing body.

The Treasury Department and the IRS read section 139E(b) as requiring both that a program be established by an Indian Tribal government, and that the program be administered under specified guidelines. This reading is similar to the requirements in Revenue Procedure 2014–35 that there must be a specific Tribal program, and that the program must have guidelines specifying how an individual qualifies for the benefit. Proposed § 1.139E–1(c) generally would adopt these two requirements and would explain how an Indian Tribal government program can meet these requirements. The proposed regulations also would address the requirement that the program not discriminate in favor of members of the governing body.

A. Program Must Be Established

Proposed § 1.139E–1(c)(2) would provide that a program must be established by an Indian Tribal government and that the program may be established by Tribal custom, government practice, or formal action of the Indian Tribal government under applicable Tribal law. The proposed regulations also would provide that to the extent permitted by applicable Tribal law, an Indian Tribal government may delegate authority to establish general welfare programs to a designated individual or entity of the Indian Tribal government.

While an Indian Tribal government may find it helpful to set forth the creation of a program through a written document, the proposed regulations

would not specifically require a written document to memorialize the establishment of the program. However, the proposed regulations would refer to applicable Tribal law to determine whether a writing is required for formal actions of the Indian Tribal government. For example, if Tribal law requires all formal actions of the Indian Tribal government to be in writing, then proposed § 1.139E–1(c)(2) would also require the establishment of the program to be in writing. If written documentation of the Indian Tribal government program is not required under Tribal law, and the Indian Tribal government does not provide written documentation of the Indian Tribal government program, the use of affidavits or Indian Tribal government declarations, whether oral or written, may be used to substantiate the establishment of the program. For example, the transcript of the minutes of an Indian Tribal government session that describe the creation of the program may be sufficient to establish an Indian Tribal government program under these proposed regulations.

B. Program Must Be Administered Under Specified Guidelines

Proposed § 1.139E–1(c)(3) would provide the requirements for the administration of the program under specified guidelines. In general, the specified guidelines of the program represent the framework for the program's operations. Thus, the proposed regulations would provide that the specified guidelines of the program must include, at a minimum, a description of the program to provide Tribal general welfare benefits, the benefits provided by the program (including how benefits are determined), the eligibility requirements for the program, and the process for receiving benefits under the program.

The Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that section 139E does not require the specified guidelines of the program to be memorialized in a written document. However, Indian Tribal governments are encouraged to set forth the specified guidelines in writing to assist recipients in determining whether a benefit received under the program is excludable from gross income under section 139E. In particular, recipients of Tribal general welfare benefits who are contacted by the IRS will need to substantiate that the benefit is excludable from gross income under section 139E and may not have any written documentation in their possession to do so. If the Indian Tribal government has documented in writing

the specific guidelines of the program, the individual recipient of the benefit may use the written documentation to substantiate that the benefit received is intended to be a Tribal general welfare benefit that is excludable from gross income under section 139E.

C. Program Cannot Discriminate in Favor of Members of the Governing Body

In accordance with section 139E(b)(1), proposed § 1.139E–1(c)(4) would provide that one of the requirements for an Indian Tribal government program is that the program not discriminate in favor of members of the governing body of the Tribe (non-discrimination requirement). Proposed § 1.139E–1(c)(4)(i) would generally define a governing body as the legislative body of the Tribe, such as the Tribal Council, or the representative equivalent of the legislative body of the Tribe. However, the Treasury Department and the IRS are aware that the form and membership of the governing body of a Tribe may vary between Tribes. For example, a Tribe may form its governing body to include all Tribal members, known as a general council Tribe. To ensure that a general council Tribe is not prevented from satisfying this requirement, proposed § 1.139E–1(c)(4)(ii) would provide that a program is treated as being in compliance with the non-discrimination requirement if the governing body of the Tribe consists of the entire adult membership of the Tribe.

Proposed § 1.139E–1(c)(4)(iii) would provide a facts and circumstances test to determine whether a program, either by its terms or in its administration, discriminates in favor of members of the governing body of the Tribe. For example, the administration of a program would discriminate in favor of members of the governing body if, based on the facts and circumstances, the benefits provided during the taxable year disproportionately favor members of the governing body of the Tribe because of their status as members of the governing body. Thus, for example, a program established to provide benefits solely to the children of members of the governing body of the Tribe (unless the Tribe is a general council Tribe) and thus defrays costs otherwise borne by members of the governing body would fail to satisfy the non-discrimination requirement.

D. No Limitation on Source of Funds

Section 139E does not provide restrictions on how an Indian Tribal government may fund an Indian Tribal government program. Section 2.03 of

Revenue Procedure 2014–35 provides that revenues that the Indian Tribal government derives from levies, taxes, service fees, tribally-owned businesses, or other sources are permissible to fund a Tribal general welfare program.

The TTAC Report and the Tribal Comments argue that the source of funds used for general welfare benefits does not matter for compliance with section 139E. The TTAC Report and the Tribal Comments request that the proposed regulations confirm that the source of funding is irrelevant and, in particular, that a Tribe's gaming revenues may be used to fund Tribal general welfare benefits under an Indian Tribal government program.

The Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that section 139E does not prohibit an Indian Tribal government from funding a general welfare program with net gaming revenues, or revenues from any other particular source. Thus, proposed § 1.139E–1(c)(5) would provide that benefits under the Indian Tribal government program may be funded by any source of revenue or funds, including net gaming revenues. However, an Indian Tribal government is permitted to restrict the source and amount of funds available to provide benefits under an Indian Tribal government program.

E. Benefits Funded by Net Gaming Revenues

Under the Indian Gaming Regulatory Act, 25 U.S.C. 2701–2721 (IGRA), a Federally-recognized Tribe is permitted to engage in gaming activities and provide net gaming revenues to its members. *See* 25 U.S.C. 2710(b). Section 25 CFR 502.16 defines “net gaming revenue” as gross gaming revenues of an “Indian gaming operation” less: (a) amounts paid out as, or paid for, prizes; and (b) total gaming-related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees. IGRA allows Tribes to use their net gaming revenues consistent with one or more of the following purposes: (1) to fund Tribal government operations or programs; (2) to provide for the general welfare of the Tribe or its members; (3) to promote Tribal economic development; (4) to donate to charitable organizations; or (5) to help fund operations of local government.

IGRA also allows Tribes to use their net gaming revenues to distribute per capita payments. *See* 25 U.S.C.

2710(b)(3). Under 25 CFR 290.2, “per capita payment” means the distribution of money or other thing of value to all members of the Tribe, or to identified groups of members, which is paid directly from the net revenues of any Tribal gaming activity, but does not include payments that have been set aside by a Tribe for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing, or other similar, specifically identified needs.

Under IGRA, a Tribe cannot distribute per capita payments unless it has a Revenue Allocation Plan (RAP) that is approved by the DOI prior to distributing per capita payments. *See* 25 U.S.C. 2710(b)(3) and 25 CFR 290.11. A Tribe does not need a RAP if no per capita payments are made or planned to be made to its members. *See* 25 CFR 290.10. Thus, no RAP is required if a Tribe intends to use its gaming revenues solely for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing, or other similar, specifically identified needs. These types of payments are not per capita payments as defined under IGRA.

Section 25 U.S.C. 2710(b)(3)(D) provides that net revenues may be used to make per capita payments to members of the Tribe only if the per capita payments are subject to Federal taxation and Tribes notify members of such tax liability when payments are made. Under section 6041 and § 1.6041–1, the Tribe generally is required to report per capita payments of \$600 or more in any taxable year on Form 1099–MISC, *Miscellaneous Information*.

Section 3402(r)(1) requires every person, including an Indian Tribe, making a payment to a member of an Indian Tribe from the net revenues of any class II or class III gaming activity conducted or licensed by such tribe to deduct and withhold from such payment a tax in an amount equal to such payment’s proportionate share of the annualized tax. A payment that constitutes a per capita payment under IGRA is gross income under section 61 and continues to be subject to withholding under section 3402(r)(1) to the extent not otherwise excepted. *See* 25 U.S.C. 2701–2721 and 25 CFR part 290. These provisions, which are intended to ensure adequate withholding on gross income arising from the distribution of class II and class III gaming activity, are not intended to and do not extend the scope of what is gross income. Thus, withholding under section 3402(r) is not imposed merely by reason of the payment being sourced in class II or

class III gaming activities but rather by reason of the payment being gross income and made in the form described in section 3402(r). Accordingly, if a payment is made under an Indian Tribal government program and meets the requirements to qualify as an excludable Tribal general welfare benefit under section 139E and these proposed regulations, then such payment is not subject to the withholding requirements of section 3402(r).

Section 139E does not address IGRA or the Federal tax treatment of per capita payments. Revenue Procedure 2014–35, however, specifically provides that per capita payments are gross income under section 61, and are subject to the information reporting and withholding requirements of sections 6041 and 3402(r). Thus, under the revenue procedure, per capita payments are not excludable from income under the administrative general welfare exclusion.

The TTAC Report argues that a distribution with a general welfare purpose under IGRA should be presumed to be a Tribal general welfare benefit under section 139E and not be treated as a taxable per capita payment under IGRA. In addition, the TTAC Report provides that a Tribe’s RAP should be relied upon when determining whether a payment is a per capita payment or a general welfare payment under section 139E. Finally, the TTAC Report states that the IRS should not be allowed to challenge an approved RAP with respect to any perceived conflict with IGRA and section 139E. Rather, the TTAC Report argues, the IRS must engage in consultation with the Tribe to resolve the perceived conflict. Finally, the TTAC Report requests that any enforcement by the IRS contrary to the RAP be prospective only, and that Tribes be given time to amend their RAPs with the DOI.

Some Tribal Comments argue that IGRA makes clear that not all equal distributions of gaming revenue are necessarily “per capita payments” to the extent that they are set aside for social welfare, medical assistance, education, housing, or similar purposes. Some Tribal Comments recommend that the proposed regulations focus on the purpose and methodology used to calculate the distributions, rather than the source of the funding or the value of the benefit. Finally, some Tribal Comments request that the IRS defer to a Tribe’s RAP and not recharacterize general welfare payments as per capita payments.

The Treasury Department and the IRS are of the view that IGRA defines per

capita payments and provides that those payments are includible in gross income for Federal income tax purposes.

However, the Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments noting that IGRA distinguishes between taxable per capita payments and other types of payments, such as general welfare payments. The Treasury Department and the IRS also are of the view that Indian Tribal governments are in the best position to determine whether net gaming revenues should be used to fund per capita payments or general welfare payments.

The Treasury Department and the IRS do not agree with the TTAC Report that a distribution with a general welfare purpose under IGRA should be presumed to be a Tribal general welfare benefit under section 139E. Even if a payment is treated as having a general welfare purpose under IGRA, as designated in a RAP or otherwise, that purpose, by itself, is not sufficient to conclude that the payment is excludable from gross income under section 139E. Instead, the Indian Tribal government program must satisfy the requirements of section 139E (or other exclusion provision) for the payment to be excluded from the recipient’s gross income.

Accordingly, proposed § 1.139E–1(c)(5)(ii) would provide that benefits under the Indian Tribal government program may be funded by net gaming revenues as permitted under IGRA. However, per capita payments, as defined under IGRA, are subject to Federal taxation under IGRA and are not excludable from gross income under section 139E or these proposed regulations. Proposed § 1.139E–1(c)(5)(ii) would further provide that, for purposes of section 139E and the proposed regulations, a payment is a per capita payment if it is identified by the Indian Tribal government as a per capita payment in a RAP that is approved by the DOI. This language is intended to mean that, if the Indian Tribal government has an approved RAP, the provisions of the RAP determine whether a payment is a per capita payment for purposes of Federal income taxation. In contrast, if the Indian Tribal government does not have a RAP, the determination of the Indian Tribal government that payments are not per capita payments is controlling for Federal income tax purposes. Whether or not the Indian Tribal government has a RAP, deference will be given to the Indian Tribal government’s determination of whether net gaming revenues are being used to make payments. The DOI is the Federal agency with sole authority to approve

the use of net gaming revenues by an Indian Tribal government, including whether per capita payments may be made under a RAP.

In drafting these proposed regulations, the Treasury Department and the IRS have considered recent litigation addressing per capita payments made by one Tribe to its members. In *United States v. Jim*, 891 F.3d 1242 (2018), the 11th Circuit affirmed the district court's conclusion that section 139E did not apply to exclude per capita payments from a Tribal member's gross income. The court held that per capita payments are taxable under IGRA, a specific statute addressing Tribal net gaming revenues. The court also held that section 139E, a more general statute, does not control or nullify IGRA. The Treasury Department and the IRS agree that section 139E does not control or nullify IGRA, and that per capita payments under IGRA cannot be excluded from gross income under section 139E. However, as noted in parts II.D and III.A.3 of this Explanation of Provisions, there is no prohibition in section 139E on Tribal general welfare benefits being paid from net gaming revenues, nor is there is a prohibition on Tribal general welfare benefits being paid in equal amounts to Tribal members. Thus, an Indian Tribal government may use net gaming revenues to provide benefits, whether or not uniform, to Tribal members. Further, those benefits may be excluded from gross income as Tribal general welfare benefits if (1) they are not designated, including under a RAP, as per capita payments by the Indian Tribal government, and (2) they otherwise meet the requirements in section 139E. For example, to be an excludable Tribal general welfare benefit, the benefit cannot be lavish or extravagant and must be provided under a program that is established by the Indian Tribal government and administered under specified guidelines.

III. Tribal General Welfare Benefits

Under section 139E(b), benefits provided under an Indian Tribal government program are Tribal general welfare benefits only if the benefits (1) are for the promotion of general welfare; (2) are available to any Tribal member who meets the guidelines; (3) are not lavish or extravagant; and (4) are not compensation for services. Proposed § 1.139E-1(d) would describe each of these requirements.

A. Benefits Must Be for the Promotion of General Welfare

1. Deference to Tribes in Determining Promotion of General Welfare

Section 139E(b)(2)(B) requires that a benefit provided under an Indian Tribal government program be for the promotion of general welfare but does not define "promotion of general welfare." The TTAC Report recommends that promotion of general welfare should be presumed when the Indian Tribal government can substantiate that the benefit meets general welfare needs or purpose, and the method of distributing the benefit is expected to achieve program goals. Further, the TTAC Report states that an Indian Tribal government may substantiate that benefits meet general welfare needs or purposes by relying on data or studies corroborating the expenses. In addition, the TTAC Report recommends that an Indian Tribal government may show that the method of distribution is expected to achieve program goals by establishing Indian Tribal government-approved verification procedures such as direct pay arrangements, applications in which recipients agree to specified program requirements, or end-of-year certifications. Finally, the TTAC Report states that Indian Tribal governments must be afforded flexibility with regard to substantiating expenses that relate to Tribal cultural traditions, religious expenses, or historical need (such as benefits paid to elders to make up for historic economic deprivation and shorter life expectancy).

Many Tribal Comments request that deference be given to Tribes and Indian Tribal governments on whether the types and amounts of benefits are for the promotion of general welfare. These Tribal Comments state that the Indian Tribal government is best suited to address the unique needs of its members, with many insisting that such discretion should be unfettered. The Tribal Comments noted that many programs may not reflect how the Treasury Department and the IRS would traditionally view general welfare, including benefits such as wellness centers, health coaches, and access to dietitians.

Other Tribal Comments state that an official determination by the Indian Tribal government, such as a Tribal resolution or other formal action, should be sufficient to demonstrate that a benefit or program is for the promotion of general welfare. With respect to benefits provided, some Tribal Comments request that the regulations defer to Indian Tribal governments on

determining whether benefits provided to Tribal members are considered "for the promotion of general welfare," particularly when the Indian Tribal government relies on its own data or other empirical data (for example, private studies, or based on Federal or state statistics). Many Tribal Comments argue that the Treasury Department and the IRS should avoid listing specific criteria required for a benefit to satisfy the promotion of general welfare requirement.

The Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that deference should be given to the Indian Tribal government in determining whether a benefit is for the promotion of the general welfare of its Tribal members or other eligible individuals. The Indian Tribal government is in the best position to determine which general welfare benefits are best suited to meet the needs of its Tribal members and other eligible individuals. As a result, these proposed regulations would not define the term "for the promotion of general welfare" or specifically provide requirements that a benefit must meet in order to satisfy section 139E(b)(2)(B). Instead, proposed § 1.139E-1(d)(2) would provide deference to the Indian Tribal government to determine, at the time the program is established, whether a benefit is for the promotion of general welfare of its Tribal members or other eligible individuals. Proposed § 1.139E-1(d)(2) would provide further that an Indian Tribal Government has sole discretion to determine whether a benefit is for the promotion of general welfare and that the IRS will defer to the Indian Tribal Government's determination that a benefit is for the promotion of general welfare. These proposed rules would be consistent with the specific language in section 2(c) of the Act, which requires that deference be given to Indian Tribal governments for the programs administered and authorized by the Tribe to benefit the general welfare of the Tribal community.

2. No Need Requirement

The administrative general welfare exclusion requires that payments be for the promotion of general welfare, which the IRS has interpreted to require a showing of individual or family need, notably financial need. This interpretation generally applies regardless of whether the benefits are provided by a Federal, State, or local government or by an Indian Tribal government. However, Revenue Procedure 2014-35 provides that the individual need criterion of the

administrative general welfare exclusion is presumed to be met for certain benefits provided under an Indian Tribal government program. Section 139E(b)(2)(B) requires that a benefit be for the promotion of general welfare but does not specifically define that term nor mention whether it incorporates a needs-based requirement.

The TTAC Report and majority of the Tribal Comments contend that the proposed regulations should not incorporate a needs-based requirement for the promotion of general welfare requirement in section 139E(b). The Tribal Comments note that section 139E is silent on an individual need requirement. Also, the Tribal Comments point to the language in Revenue Procedure 2014–35, which conclusively presumed individual need was satisfied, as support for not including a requirement for the showing of individual need in section 139E.

As noted in part III.A.1 of this Explanation of Provisions, proposed § 1.139E–1(d)(2) would provide that an Indian Tribal Government has sole discretion to determine whether a benefit is for the promotion of general welfare and that the IRS will defer to the Indian Tribal Government's determination that a benefit is for the promotion of general welfare. Consistent with this approach, Indian Tribal Governments thus would have sole discretion as to whether to consider individual need or not in designing a general welfare program. In addition, the Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that section 139E was intended by Congress to generally codify Revenue Procedure 2014–35, which conclusively presumed that individual need was satisfied if the program met certain requirements. This conclusion is also consistent with the legislative history of section 139E. See House Debate, at H7601 (Representative Devin Nunes stating “that the IRS will not interpret the statute as requiring individualized determinations of financial need where a tribal government has established a program consistent with the statute”); see also Senate Colloquy, at S5686 (Senator Jerry Moran asking Senator Ron Wyden, and Senator Wyden agreeing, that the IRS will “in no event require an individualized determination of financial need” if a Tribal program meets the other requirements of section 139E).

Accordingly, proposed § 1.139E–1(d)(2) specifically states that Tribal general welfare benefits may be provided without regard to the financial or other need of Tribal program

participants. However, Indian Tribal governments have broad discretion to establish and administer general welfare programs and may choose to limit a program or its benefits to Tribal program participants based on a showing of individual need.

3. Benefits May Be in Equal Amounts

Section 139E does not address whether Tribal general welfare benefits may be provided to recipients in equal amounts. However, in considering the enactment of section 139E, Representative Nunes expressed an intent that section 139E apply to pro rata payments. In addressing the IRS's frequent insistence that Tribal benefits be based on a stipulation based on individualized financial need, he stated, “This stipulation prevents the general welfare exclusion from covering programs designed to provide substantially equal benefits to all qualifying members of a tribe or to provide benefits based on determinations of needs that are not financial in nature.” See House Debate, at H7601. Revenue Procedure 2014–35 does not directly address this issue of whether general welfare benefits under its safe harbors could be provided equally to all eligible individuals, but states that per capita payments to Tribal members of Tribal gaming revenues that are subject to IGRA are gross income under section 61, are subject to the information reporting and withholding requirements of sections 6041 and 3402(r), and are not excludable from gross income.

The TTAC Report correctly notes that section 139E does not prohibit general welfare benefits from being distributed in uniform amounts. The Tribal Comments recommend that the Treasury Department and the IRS defer to Tribes in determining whether pro rata payments (that is, uniform payments to each recipient) are appropriate. In general, several Tribal Comments, when referring to net gaming revenues under IGRA, argue that IGRA does not treat all pro rata payments as taxable, but instead looks to the purpose and methodology used to calculate the payments.⁴ The Tribal Comments also request that the proposed regulations permit pro rata payments under an Indian Tribal government program, as several Tribal Comments emphasized that distributing benefits in equal amounts is often the most efficient method to provide

benefits, such as for health and wellness and broadband internet access.

The Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that section 139E does not prohibit an Indian Tribal government program from providing Tribal general welfare benefits to recipients in equal amounts. Accordingly, proposed § 1.139E–1(d)(2) would provide that Tribal general welfare benefits may be provided on a uniform or pro-rata basis to Tribal program participants.

4. Specific Types of Benefits

The TTAC Report and the Tribal Comments recommend clarification on whether payment of benefits for disaster relief and similar assistance qualify under section 139E. In addition, both the TTAC Report and many Tribal Comments request that an Indian Tribal government disaster declaration qualify to establish the existence of a disaster for purposes of identifying relief payments under section 139E.

Section 139 generally provides an exclusion from gross income for qualified disaster relief payments. Qualified disaster relief payments generally include certain amounts paid to or for the benefit of an individual in connection with a qualified disaster, including a Federally declared disaster. Specifically, section 139(b)(4) includes as a qualified disaster relief payment an amount paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare. Section 139(b)(4) was enacted to codify the administrative general welfare exclusion for certain disaster relief payments, but does not supplant it. See Notice 2002–76 (2002–2 C.B. 917). Thus, benefits paid by Indian Tribal governments to individuals affected by a disaster may be excluded from the individuals' gross income if the requirements of the administrative general welfare exclusion are met. Similarly, these disaster relief benefits may be excluded from gross income if they qualify as Tribal general welfare benefits under section 139E.

The Treasury Department and the IRS recognize that Indian Tribal governments have broad discretion to provide benefits to individuals who are affected by a disaster or other emergency situation that does not meet the requirements of a qualified disaster under section 139. Thus, proposed § 1.139E–1(d)(2) would include as a permissible general welfare purpose “assistance for disasters or emergency situations.” The Indian Tribal

⁴ See part II.E. of this Explanation of Provisions for a fuller discussion of IGRA and general welfare payments made from net gaming revenues.

government need not make a specific Tribal disaster declaration.

In addition, the TTAC Report requests that the proposed regulations specifically provide that wellness and health-related programs may be Tribal general welfare benefits. The TTAC Report acknowledges that section 139D applies to certain health care expenses but requests clarification that section 139E operates independent of, and is not limited by, section 139D of the Code. In particular, the concern is that wellness and health-related programs may not fall within the section 139D exclusion.

Section 139D generally provides an exclusion from gross income for any qualified Indian health care benefit. Qualified Indian health care benefits include medical care provided by an Indian Tribe or Tribal organization, or coverage under insurance or a plan provided by an Indian Tribe or Tribal organization for medical care. See section 139D(b)(2)-(4). For purposes of section 139D, “medical care” has the same meaning as when used in section 213 of the Code. Amounts paid for benefits that are merely beneficial to the general health of an individual, such as certain wellness and health-related programs, as well as care by an unlicensed spouse or relative, are not amounts paid for medical care and thus are not excluded under section 139D. See section 213(d) and § 1.213-1(e)(1)(ii).

The Treasury Department and the IRS agree that section 139E operates independently of, and is not limited by, section 139D. Thus, in accordance with the deference provided to Indian Tribal Governments in proposed § 1.139E-1(d)(2), an Indian Tribal Government may determine that wellness and health-related programs are for the promotion of general welfare under section 139E.

B. Benefits Must Be Available to Any Tribal Program Participant

Section 139E(b)(2) provides, in relevant part, that a benefit provided under the program must be available to any Tribal member who meets the specified guidelines of the program. Revenue Procedure 2014-35 requires that the benefit be available to any eligible individual who satisfies the program guidelines, subject to budgetary constraints. The TTAC Report and the Tribal Comments do not specifically address this requirement.

The Treasury Department and the IRS have determined that this requirement should be interpreted in a manner similar to Revenue Procedure 2014-35. Thus, proposed § 1.139E-1(d)(3) would

provide that a benefit under the Indian Tribal government program must be available to any Tribal program participant who meets the specified guidelines of the program, subject to budgetary constraints.

C. Benefits Cannot Be Lavish or Extravagant

Section 139E(b)(2) provides, in relevant part, that benefits provided under the program cannot be lavish or extravagant. Section 139E(c)(3) provides that the Secretary, in consultation with the TTAC, must establish guidelines for what constitutes lavish or extravagant benefits with respect to Indian Tribal government programs. The Treasury Department and the IRS have consulted with the TTAC during the drafting of these proposed regulations. In addition, the Treasury Department and the IRS will hold Tribal consultation before finalizing the proposed regulations.

Like section 139E, Revenue Procedure 2014-35 prohibits benefits that are lavish or extravagant. It does not define “lavish or extravagant” but does provide that the benefits cannot be “lavish or extravagant under the facts and circumstances.”

The TTAC Report recommends that the term “lavish or extravagant” be defined as a relative term that depends on the unique circumstances of the Tribe, and also depends on the type of benefit being provided (such as, one-time payment or monthly assistance). The TTAC Report sets forth a non-exclusive list of circumstances that should be considered when determining if a benefit is lavish or extravagant: an Indian Tribal government’s economic circumstances or factors, culture and cultural practices, history, geographic area, traditions, and resources. The TTAC Report recommends deference to Indian Tribal governments and proposes a rebuttable presumption that the benefit is not lavish or extravagant if the Indian Tribal government program meets general welfare needs or purposes, and the method of distribution is expected to achieve program goals.

Several Tribal Comments recommend that the proposed regulations defer to the Tribes or their Indian Tribal governments for determining whether a benefit is lavish or extravagant. Most Tribal Comments provide that the term is relative and depends on the unique circumstances of each Tribe and the type of benefit provided. Some Tribal Comments recommend deference to an Indian Tribal government’s definition of lavish or extravagant as established by official actions, such as Tribal ordinances, resolutions, and policies. In

addition, some Tribal Comments propose that a facts and circumstances standard, similar to Revenue Procedure 2014-35, be applied to define lavish or extravagant. Under such a standard, a benefit would not be lavish or extravagant if based upon a particular Tribe’s political, socio-economic and cultural facts and circumstances as determined by that Tribe. Some Tribal Comments argue that the definition should be subject to the Tribal canon, as opposed to the traditional canons of statutory construction, and that any ambiguity be construed in favor of the Tribe.

Some Tribal Comments describe what the proposed regulations should not do when defining lavish or extravagant. For example, some Tribal Comments urge that the proposed regulations should define lavish or extravagant in a way that targets egregious abuse but otherwise does not affect Indian Tribal government programs that are designed and administered in good faith. Other Tribal Comments suggest that the term lavish or extravagant not be defined by reference to dollar amounts, and specifically highlighted cost of living variations (for example, geographic differences). Some Tribal Comments emphasize that the proposed regulations should not use examples that may suggest limitations on the eligibility of program benefits. Specifically, these commenters suggest that it would be more helpful to include examples of benefits that are not considered lavish or extravagant. Finally, some Tribal Comments argue that the Treasury Department and the IRS should not refer to other Code provisions for guidance on interpreting the phrase “lavish or extravagant” under section 139E.

The Treasury Department and the IRS generally agree with the TTAC Report and the Tribal Comments. Accordingly, proposed § 1.139E-1(d)(4) would provide a facts and circumstances test to determine whether a Tribal general welfare benefit is lavish or extravagant under section 139E. Under proposed § 1.139E-1(d)(4), whether a benefit is lavish or extravagant would be based on the facts and circumstances at the time the benefit is provided. Relevant facts and circumstances would include a Tribe’s culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. A facts and circumstances test is consistent with Revenue Procedure 2014-35, as well as the TTAC Report and the Tribal Comments suggesting that the Tribe’s unique circumstances should be considered when evaluating whether the Indian Tribal government determined a Tribal general welfare

benefit to be lavish or extravagant at the time the benefit is provided. However, proposed § 1.139E-1(d)(4) also would provide a presumption that a benefit is not lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of the Indian Tribal government program.

The TTAC Report and some Tribal Comments mention that the frequency of benefit (for example, lump sum or monthly payment) should be considered when evaluating whether a program's benefit is lavish or extravagant. The Treasury Department and the IRS agree that the frequency of payment should be considered when determining whether a Tribal general welfare benefit is lavish or extravagant. Under a facts and circumstances test, an Indian Tribal government may establish a program that provides the types of benefits, including frequency of payment, that best meet the needs of its Tribal members.

D. Benefits Cannot Be Compensation for Services

Section 139E(b)(2)(D) provides that a Tribal general welfare benefit paid under an Indian Tribal government program cannot be compensation for services, with exceptions discussed in part IV of this Explanation of Provisions.⁵ Section 139E(b)(2)(D) does not provide a specific definition for the term compensation for services for purposes of section 139E. Revenue Procedure 2014-35 also provides that benefits under the safe harbors cannot be compensation for services but does not specifically define compensation for services. The prohibition on compensation for services is a long-standing core principle of the administrative general welfare exclusion. See Revenue Ruling 75-246 (1975-1 C.B. 24).

The TTAC Report acknowledges that section 139E prohibits compensation for services from being treated as Tribal general welfare benefits. The TTAC Report and the Tribal Comments do not recommend a specific definition of compensation for services, but the TTAC Report recommends that the proposed regulations confirm that (1) a benefit in connection with Tribal custom or tradition regarding

community service is not compensation for services; (2) compensation for services does not include cultural or ceremonial gifts and payments, as determined by the Tribe; and (3) payments as part of training programs are not compensation for services. Similar to this third issue, one Tribal Comment argues that on-the-job training, apprenticeships, and other classes for job skills for which participants receive payment should not be treated as compensation for services. Finally, one Tribal Comment argues that the rule in section 139E(b)(2)(D) should be read narrowly to cover services that are traditionally provided under an employment or contracted-vendor relationship.

The first two issues raised in the TTAC Report overlap with the rules in section 139E(c)(5), which provides that certain benefits provided for participation in cultural or ceremonial activities are not treated as compensation for services. These issues from the TTAC Report are addressed in part IV of this Explanation of Provisions. The third issue, relating to whether payments made to individuals in various types of training programs are compensation for services, is addressed under section 61 and current law relating to gross income generally.

Section 61(a) generally provides that, except as otherwise provided in the Code, gross income means all income from whatever source derived, and this includes compensation for services, including fees, commissions, fringe benefits, and similar items, whether paid in money or property. Section 1.61-2(a)(1) of the Income Tax Regulations provides additional examples of payments that are included in gross income because they are compensation for services, such as wages, salaries, and commissions paid salesmen. However, compensation for services also includes amounts that are not paid in an employment or contracted-vendor relationship. Thus, the proposed regulations do not adopt the Tribal Comment arguing that compensation for services should be read narrowly to cover only services that are traditionally provided under an employment or contracted-vendor relationship.

In the context of training, apprenticeships, and other skills training programs, existing IRS guidance on the administrative general welfare exclusion provides assistance on how to distinguish whether a payment is a general welfare payment or is compensation for services. See Revenue Ruling 63-136 (1963-2 C.B. 19) (excluding from income the payments

for on-the-job career training or retraining where such payments are “intended to aid the recipients in their efforts to acquire new skills that would enable them to obtain better employment opportunities”); Revenue Ruling 65-139 (1965-1 C.B. 31) (as clarified by Revenue Ruling 66-240 (1966-2 C.B. 19)). In general, the determination as to whether payments under training programs are includible in a participant's gross income rests on whether the activity for which the payments are received is in exchange for the performance of services (compensation for services) or is for participation in a training program that promotes the general welfare (general welfare payment). Revenue Ruling 75-246 (1975-1 C.B. 24).

Because existing guidance addresses the long-standing distinction between compensation for services and general welfare payments, the Treasury Department and the IRS have determined that the proposed regulations should define compensation for services by reference to current law. Thus, proposed § 1.139E-1(d)(5) would define the term compensation for services by referring to the rules in section 61(a). These rules encompass all the regulations and other IRS guidance under section 61(a) that interpret the meaning of compensation for services.

IV. Exception to Prohibition on Compensation for Services

As noted in part III.D. of this Explanation of Provisions, section 139E(b)(2)(D) generally provides that a Tribal general welfare benefit cannot be compensation for services. However, section 139E(c)(5) contains an exception to that general rule and provides that any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of Tribal culture will not be treated as compensation for services. Accordingly, such items may, if the other requirements of section 139E are satisfied, be Tribal general welfare benefits that are excluded from gross income.

Revenue Procedure 2014-35 contains a similar exception. Specifically, section 5.03 of the revenue procedure provides that the safe harbors apply to “benefits provided under an Indian Tribal governmental program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances, or nominal cash honoraria provided to religious or spiritual officials or leaders . . . to recognize their participation in cultural, religious, and social events.”

⁵ Section 139E(c)(5) provides an exception under which any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of Tribal culture “shall not be treated as compensation for services.” This exception to the general prohibition on compensation for services is addressed in part IV of this Explanation of Provisions.

A. Participation in Cultural or Ceremonial Activities

The exception in section 139E(c)(5) applies only if specific benefits are “for participation in cultural or ceremonial activities for the transmission of tribal culture.” Revenue Procedure 2014–35 contains a similar exception, but that exception is limited to specific benefits “provided to religious or spiritual officials or leaders (including but not limited to medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, and social events (including but not limited to pow-wows [sic], rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and honoring events).” As the TTAC Report points out, Revenue Procedure 2014–35 refers only to event participation by religious or spiritual leaders and does not describe larger Indian Tribal-wide cultural, ceremonial, and community service general welfare programs. The TTAC Report recommends that the proposed regulations provide that the IRS must defer to Tribal determinations on what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture. Some Tribal Comments request that the exclusion apply to attendance at Tribal gatherings and participation in community service or tribal meetings. Some Tribal Comments provide examples of services that should not be considered compensation for services, such as blessings provided by Tribal members, preparation of traditional foods at events, support for sponsoring Tribal events, and the activities of traditional healers performed at or for official Tribal events like ceremonial or traditional gatherings. Finally, some Tribal Comments state that the proposed regulations should apply the section 139E(c)(5) exception to services that are traditionally provided through employment or contracted-vendor arrangements.

The Treasury Department and the IRS recognize that the language in section 139E(c)(5) is broader than Revenue Procedure 2014–35 in that the section 139E(c)(5) exception is not limited to religious or spiritual officials or leaders. The Treasury Department and the IRS also agree with the TTAC Report that Tribes are in the best position to determine what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture. Thus, proposed § 1.139E–1(e) would provide that the Indian Tribal government determines what it means to participate in cultural or ceremonial activities for the transmission of Tribal culture and

would include the list of examples from Revenue Procedure 2014–35 (powwows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and honoring events). It would further provide that the IRS will defer to the Indian Tribal government’s determination of whether an activity is a cultural or ceremonial activity for the transmission of Tribal culture.

The Treasury Department and the IRS do not agree with the Tribal Comments stating that the exception in section 139E(c)(5) broadly applies to services that are traditionally provided under an employment or contracted-vendor relationship because section 139E is an exclusion from gross income for individuals and families, not businesses. For example, a corporation owned by a Tribal member that contracts with the Indian Tribal government to cater a Tribal ceremony is not within the section 139E(c)(5) exception. In this case, any payment received by the corporation from the Tribe to provide catered food at a Tribal ceremony is business income. However, a Tribal member that volunteers to make traditional foods for a Tribal ceremony and receives an item of cultural significance, cash honorarium, or reimbursement of costs is within the exception of section 139E(c)(5).

B. Items of Cultural Significance

Section 139E(c)(5) provides, in part, that “items of cultural significance” that are provided for participation in cultural or ceremonial activities for the transmission of Tribal culture are not treated as compensation for services. Revenue Procedure 2014–35 also contains an exception for items of cultural significance that are not lavish or extravagant under the facts and circumstances. The term “items of cultural significance” is not defined in section 139E or in Revenue Procedure 2014–35. The TTAC Report and the Tribal Comments recommend that deference should be given to Indian Tribal governments and Tribes to determine what are items of cultural significance for their Tribe. One Tribal Comment provides a list of examples of items with cultural significance, including blankets, cash, food, regalia items, fabric, beads, drums, pelts, feathers, artwork, baskets, clothing, household items, tobacco, gift cards, animals, and vehicles.

The Treasury Department and the IRS agree that Indian Tribal governments are in the best position to determine items of cultural significance. Thus, proposed § 1.139E–1(e)(2) would provide that the Indian Tribal government determines items of cultural significance and that

the IRS will defer to the Indian Tribal government’s determination. Unlike the similar rule in Revenue Procedure 2014–35, the proposed regulations would not limit the items of cultural significance to those that are not lavish or extravagant. However, the prohibition on lavish or extravagant benefits in proposed § 1.139E–1(d)(4) would apply broadly to all Tribal general welfare benefits, including those that are provided under section 139E(c)(5) for participation in cultural or ceremonial activities. In addition, the Treasury Department and the IRS do not view cash, gift cards, or vehicles themselves as items with cultural significance, although such items may be used to reimburse costs for participation in cultural or ceremonial activities without being considered compensation for services.

C. Cash Honorarium

Section 139E(c)(5) provides, in part, that cash honoraria provided for participation in cultural or ceremonial activities for the transmission of Tribal culture is not treated as compensation for services. Revenue Procedure 2014–35 contains a similar exception, although it is limited to nominal cash honoraria. The term “cash honoraria” is not defined in section 139E or in Revenue Procedure 2014–35. The TTAC Report and the Tribal Comments request that the proposed regulations recognize Congress’s decision to eliminate the qualifier that honoraria be “nominal” and provide that a Tribe’s determination of the proper amount of the honorarium should be presumed to be reasonable and fair.

The Treasury Department and the IRS agree with the TTAC Report and the Tribal Comments that section 139E is broader than Revenue Procedure 2014–35 by not limiting the exception to the compensation for services requirement to nominal cash honoraria. Thus, proposed § 1.139E–1(e) would not provide that the compensation for services exception in section 139E(c)(5) is limited to nominal cash honoraria.

D. Reimbursement of Costs

Section 139E(c)(5) provides, in part, that reimbursement of costs provided for participation in cultural or ceremonial activities for the transmission of Tribal culture is not treated as compensation for services. Revenue Procedure 2014–35 does not contain a similar exception. Section 139E(c)(5) does not define the term “reimbursement of costs.” However, the Treasury Department and the IRS expect that the usual usage of the term applies for purposes of section 139E. Thus, the

reimbursement of costs generally would include amounts paid by the Indian Tribal government to an individual to reimburse specific amounts paid by the individual to participate in the cultural or ceremonial activity.

E. Members of Other Tribes

As noted in part I.D. of this Explanation of Provisions, the proposed regulations generally would define the term Tribal member to mean a member of the Tribe that establishes or maintains the Indian Tribal government program. Some Tribal Comments highlight that some Tribes may provide benefits to individuals who are Tribal members of a different Tribe than the one establishing the general welfare program. For example, an Indian Tribal government may provide benefits to a cultural, spiritual, or ceremonial leader of another Tribe who teaches shared Tribal cultural practices or ceremonial functions.

The Treasury Department and the IRS agree that, solely for purposes of the exception in section 139E(c)(5) relating to benefits provided for participation in ceremonial or cultural activities, the recipient may be a member of a Tribe that is different from the Tribe that establishes or maintains the program. Thus, proposed § 1.139E-1(b)(8)(ii) would provide that, solely for purposes of proposed § 1.139E-1(e), the definition of Tribal program participant may include a member of a Tribe that is different from the Tribe that establishes the Indian Tribal government program and provides the Tribal general welfare benefit. For example, if a cultural leader from one Tribe performs at another Tribe's powwow, a cash honorarium given to the cultural leader is not compensation for services under section 139E(c)(5).

V. Issues Not Addressed in Proposed Regulations

A. Interaction With Other Federal Programs

The TTAC Report requests that the proposed regulations provide that individual need be presumed for all Tribal general welfare benefits that meet the requirements of section 139E. Moreover, the TTAC Report and many Tribal Comments request that the Treasury Department and the IRS coordinate with other Federal agencies, including the Social Security Administration, to ensure that Tribal general welfare benefits are not treated as income or a disqualifying resource for purposes of program eligibility, such as supplemental security income benefits under 42 U.S.C. 1381 *et seq.*

The Treasury Department and the IRS have authority to interpret and provide rules under section 139E to determine whether a benefit is excludible from gross income for Federal income tax purposes. However, the issue of whether a Tribal general welfare benefit is taken into account for purposes of determining other Federal benefits is outside the authority of the Treasury Department and the IRS, and therefore beyond the scope of these proposed regulations. The Treasury Department and the IRS are willing to work with the TTAC and Tribes to confer with other Federal agencies and provide advice on how the Federal tax law applies to Tribal general welfare benefits.

B. Grants to Indian-Owned Enterprises

The TTAC Report requests that the proposed regulations provide that grants to establish or expand Indian-owned enterprises are excludible from gross income under section 139E. The TTAC Report cites Revenue Ruling 77-77 (1977-1 C.B. 11), for the proposition that non-reimbursable grants made under the Indian Financing Act of 1974 to Indians to expand profit-making Indian-owned economic enterprises on or near reservations are excludable from gross income under the administrative general welfare exclusion. The TTAC Report also requests that the guidance clarify that "expanding" a business includes assistance to help a business remain in operation or recover from losses, and also to allow the Tribe to be able to determine what it means to be an Indian-owned enterprise. One Tribal Comment also requests that grants for establishing and assisting Indian-owned enterprises should be excluded from gross income.

The administrative general welfare exclusion generally does not apply to payments made to businesses, including sole proprietors. Instead, the exclusion is intended to address benefits that promote the general welfare of families and individuals. See also Revenue Procedure 2014-35, which applies only to individuals and not to businesses. Section 139E also applies only to individuals and not to businesses. Thus, these proposed regulations do not address grants to Indian-owned enterprises. However, these proposed regulations do not affect the validity of Revenue Ruling 77-77, which provides a limited exception to the rule that the administrative general welfare doctrine does not apply to businesses. Under that revenue ruling, a grant made by an Indian Tribal government to a Tribal member to expand an Indian-owned business on or near a reservation is excluded from the Tribal member's

gross income under the administrative general welfare exclusion.

C. Trust Arrangements and Deferred Benefits

The TTAC Report states that an Indian Tribal government program may distribute general welfare benefits from trust arrangements, including payments that are set aside for the health, education, and welfare of trust beneficiaries under IGRA. The TTAC Report recommends that the proposed regulations provide that the determination of whether a payment is a general welfare benefit is made at the time the trust distributes the payment to the beneficiary from the trust. Some Tribal Comments asked that the proposed regulations expressly recognize that health, education, and welfare payments under a minor's trust can be structured in a way to qualify payments for exclusion under section 139E.

The TTAC Report requests that the proposed regulations provide that an Indian Tribal government program may permit Tribal members and other recipients to defer and accumulate benefits for future payment. The TTAC Report suggests that if the amount is not lavish or extravagant at the time the beneficiary defers receipt of the payment, then section 139E is satisfied at the time the Indian Tribal government distributes the funds to the beneficiary. The TTAC Report also recommends that section 139E not be limited by constructive receipt and economic benefit restrictions on the deferral of taxable income or benefits. Many Tribal Comments support the TTAC Report on the issue of deferred benefits, and request that the proposed regulations provide examples of deferred benefits.

Section 139E does not specifically address trust arrangements or deferred benefits. Section 139E addresses whether a benefit that is generally includible in gross income under section 61 may be excluded from gross income under section 139E. It does not address the taxable year in which a benefit may be includible in gross income, in particular if a benefit is put into a trust or its receipt is deferred through some other arrangement. Most individuals use the cash receipts and disbursements method of accounting, which incorporates numerous rules addressing when amounts must be included in gross income. Those rules generally apply in determining when a benefit must be included in the gross income and include the concepts of constructive receipt and economic benefit. In addition, there is existing authority addressing trusts under IGRA

that is not affected by these proposed regulations. See Revenue Procedure 2011–56 (2011–49 I.R.B. 834), which provides a safe harbor under which the IRS treats a Tribe as the grantor and owner of a trust for the receipt of Tribal gaming revenues under IGRA for the benefit of minors and certain other individuals. However, as described in the Comments and Public Hearing section of this preamble, the Treasury Department and the IRS request comments on whether additional guidance is needed under section 139E or other Code sections to address the tax treatment of deferred benefits or benefits paid from trust arrangements and, if so, what specific fact patterns should be addressed.

D. Advance Rulings

Some Tribal Comments propose that the Treasury Department and the IRS allow Tribes to request advance rulings at the option of the Tribe to address the tax status of general welfare programs. These comments request, however, that any procedure involving advance rulings requests must be implemented with narrow parameters to avoid becoming a de facto audit of Tribal programs. In addition, these Tribal Comments suggest that these advance rulings be binding on states and other Federal agencies. The Treasury Department and the IRS appreciate that Indian Tribal governments have been awaiting guidance under section 139E and have concerns about how the IRS may view existing general welfare programs. The IRS has a general process in place for entities and individuals to request a letter ruling on the tax treatment of a particular transaction or program, but that process generally does not apply if the request presents an issue that cannot be readily resolved before a regulation or any other published guidance is issued. See Revenue Procedure 2024–1 (2024–1 I.R.B. 1). If an Indian Tribal government or a Tribal member receives a letter ruling from the IRS, the ruling generally is binding on the IRS. However, a letter ruling would address only Federal tax law and would not be binding in any way on any other Federal agency or any state agency.

As discussed in part VIII of this Explanation of Provisions, section 4(a) of the Act requires the IRS to suspend all audits or examinations to the extent the audit or examination relates to the exclusion from gross income of benefits under the general welfare exclusion. After soliciting public comments and holding Tribal consultation on these proposed regulations, the Treasury Department and the IRS intend to issue

final regulations that provide clear and helpful guidance on Tribal general welfare benefits. Further, in accordance with section 3(b)(2) of the Act, the Secretary of the Treasury, in consultation with the TTAC, will establish certain training and education, which specifically includes the provision of training and technical assistance to Tribal financial officers about implementation of section 139E. The Treasury Department and the IRS will continue to work with the TTAC and Tribes throughout this rulemaking process to ensure that the final rules are comprehensive and provide as much clarity and certainty as possible within the parameters of the section 139E.

VI. Safe Harbors and Examples

The Tribal Comments were not uniform on whether it would be helpful for the proposed regulations to provide examples of benefits that qualify as Tribal general welfare benefits. Some Tribal Comments recommend examples to help Indian Tribal governments identify what types of benefits would be considered for promotion of general welfare. In contrast, some Tribal Comments express concern that a list of examples of permissible benefits would over time be viewed as an exhaustive list of permissible benefits.

The TTAC Report requests that Indian Tribal governments be given the ability to rely on programs that meet the safe harbor requirements of Revenue Procedure 2014–35. Some Tribal Comments argue that the safe harbors in Revenue Procedure 2014–35 were arbitrarily limiting and state that the proposed regulations should refrain from using safe harbors to avoid establishing similar limitations under section 139E. However, many other Tribal Comments recommend incorporating the safe harbors from Revenue Procedure 2014–35 into the proposed regulations or expanding the safe harbors to include payments from net gaming revenue, payments under section 139E(c)(5), and programs developed pursuant to official determinations by Indian Tribal governments. The Tribal Comments also request that the proposed regulations expressly state that a safe harbor is not intended to limit the types of general welfare programs otherwise permitted under section 139E.

Revenue Procedure 2014–35 contains numerous safe harbors under which the IRS will conclusively presume that the individual need requirement of the administrative general welfare exclusion is met. As a revenue procedure, this guidance represents an official statement of a procedure by the IRS that

affects the rights or duties of taxpayers under Federal tax law, rather than an official statement of IRS position on a substantive tax issue like the administrative general welfare exclusion. See § 601.601 of the Statement of Procedural Rules (25 CFR part 601). Thus, the safe harbors in Revenue Procedure 2014–35 do not represent examples of the application of the administrative general welfare exclusion, but instead are fact patterns for which the IRS is required to presume that the need requirement of the administrative general welfare exclusion is met. Accordingly, taxpayers may rely upon the safe harbors in Revenue Procedure 2014–35, but the revenue procedure does not have the force and effect of Treasury regulations.

The enactment of section 139E provides authority for the Treasury Department and the IRS to issue regulations to interpret section 139E. Regulations are the most authoritative form of published guidance and generally include substantive rules interpreting the statute. Treasury regulations often include examples in the regulatory text to illustrate specific provisions of the regulation. These examples describe how the regulatory rule applies to a set of facts, but examples cannot be the source of the rule itself.

The proposed regulations would provide examples of benefits that are for the promotion of general welfare under section 139E(b)(2)(B). The Treasury Department and the IRS agree that the examples in these proposed regulations are illustrations of benefits that are for the promotion of general welfare and are not intended to represent an exhaustive list of qualifying benefits. The examples in the proposed regulations also would incorporate the safe harbors in Revenue Procedure 2014–35. Section 139E was intended generally to codify Revenue Procedure 2014–35, and these proposed regulations are intended to be no less favorable than Revenue Procedure 2014–35, consistent with the intent of Congress reflected in the House Debate and Senate Colloquy in enacting the Act. Therefore, the general welfare programs described as safe harbors in Revenue Procedure 2014–35 would also be programs that satisfy the promotion of general welfare requirement under section 139E(b)(2)(B). Thus, these proposed regulations would include the list of programs described in section 5.02(2) of Revenue Procedure 2014–35 as a non-exhaustive list of the types of programs that would satisfy the general welfare requirement in section 139E and these proposed regulations. As described in the Comments and Public

Hearing section of this preamble, the Treasury Department and the IRS request comments on whether additional examples are necessary.

VII. Proposed Obsolescence of Revenue Procedure 2014–35

Revenue Procedure 2014–35 generally provides principles for applying the administrative general welfare exclusion and provides safe harbors under which the IRS conclusively presumes that the individual need requirement of the administrative general welfare exclusion is met for benefits provided under Indian Tribal government programs that are described under section 5.02 or 5.03 of the revenue procedure. In Notice 2015–34, the Treasury Department and the IRS announced that section 139E codified (but does not supplant) the administrative general welfare exclusion for certain benefits provided under Indian Tribal government programs, and that “Revenue Procedure 2014–35 may be broader than section 139E in some instances.”

Many Tribal Comments argue that the safe harbors in Revenue Procedure 2014–35 were superseded by section 139E. Some Tribal Comments express the preference that Revenue Procedure 2014–35 be expanded to explicitly incorporate the concept of deference to the Tribe.

The Treasury Department and the IRS are of the view that the proposed regulations, if finalized, generally would provide rules that are at least as favorable as the safe harbors provided under Revenue Procedure 2014–35 and therefore, that Indian Tribal governments may have no further need to rely on Revenue Procedure 2014–35. In addition, the Treasury Department and the IRS expect that Indian Tribal governments would benefit by having a single set of rules that apply specifically to their general welfare benefit programs, rather than having to analyze their programs under both Revenue Procedure 2014–35 and the section 139E final regulations. Thus, the Treasury Department and the IRS propose to obsolete and supersede Revenue Procedure 2014–35 after the final regulations are applicable. As described in the Comments and Public Hearing section of this preamble, the Treasury Department and the IRS request comments on this issue.

VIII. Audit Suspension and IRS Training

Section 4 of the Act directs the Secretary of the Treasury to suspend all audits and examinations of Indian Tribal governments and members of Tribes (or any spouse or dependent of such a member) to the extent such an

audit or examination relates to the exclusion of a payment or benefit from an Indian Tribal government under the general welfare exclusion, until the education and training prescribed by section 3(b)(2) of the Act is completed. Section 3(b)(2) of the Act directs the Secretary of the Treasury, in consultation with the TTAC, to establish and require (A) training and education for internal revenue field agents who administer and enforce internal revenue laws with respect to Tribes on Federal Indian law and the Federal Government’s unique legal treaty and trust relationship with Indian Tribal governments, and (B) training of such internal revenue field agents, and provision of training and technical assistance to Tribal financial officers, about implementation of the Act and the amendments made thereby.

The TTAC Report requests that the proposed regulations refer to the audit suspension provided in section 4 of the Act. Specifically, the TTAC Report requests that the proposed regulations provide that all audits and examinations of Indian Tribal governments, Tribal members, and qualified nonmembers (as defined in Revenue Procedure 2014–35) to the extent that an audit or examination relates to the reporting or exclusion of a Tribal general welfare benefit are suspended until a specified time related to prospective enforcement of the final regulations. The TTAC Report further requests that enforcement of the final regulations be delayed for one year after the training and guidance required by section 3(b)(2) of the Act is completed (the compliance date), and that when examinations commence, they relate only to the periods beginning on or after the one-year period beginning on or after the compliance date. The TTAC Report further states that guidance under section 139E must be applied prospectively and that Tribes and Tribal citizens who have developed and administered programs in good faith will not be audited retroactively once the audit suspension is lifted. Many Tribal Comments agree with the TTAC Report.

The Treasury Department and the IRS acknowledge that section 4 of the Act provides a temporary suspension of audits and examinations of Indian Tribal governments and Tribal members (or any spouse or dependent of such member) to the extent that the audit or examination relates to the exclusion of a payment or benefit from an Indian Tribal government under the general welfare exclusion. The Treasury Department and the IRS expect that the audit suspension described in section 4 of the Act will continue until all the

requirements of section 3(b)(2) of the Act are satisfied. In particular, the Treasury Department and the IRS contemplate that the education and training described in section 3(b)(2) of the Act, which requires training to the Internal revenue field agents and to Tribal financial officers about implementation of section 139E, cannot and will not take place until final regulations are issued under section 139E. Thus, once final regulations under section 139E are issued, the Treasury Department and the IRS, in consultation with the TTAC, will conduct the required education and training under section 3(b)(2) of the Act. Only after that education and training is complete will the audit suspension be lifted. These proposed regulations do not address the education and training that will be required to be complete before the audit suspension is lifted, but the Treasury Department and the IRS will consult with the TTAC on the requirements of section 3(b)(2) of the Act before the commencement of the required education and training and will provide further guidance after that consultation.

IX. Information Reporting

If section 139E applies to exclude the value of a benefit from the Tribal program participant’s gross income, then there is no requirement to file with the IRS or furnish to the Tribal program participant an information return on Form 1099–MISC, *Miscellaneous Information*, for that benefit. Indian Tribal governments should not include the amount of any benefit that qualifies for exclusion under section 139E on a Form 1099–MISC that is filed with the IRS and furnished to the Tribal program participant. Including such amounts on a Form 1099–MISC when such amounts are not required to be reported on the Tribal program participant’s individual tax return could result in IRS compliance activity, such as inquiries from the IRS automated underreporting (AUR) program.

X. Tribal Consultation

Some Tribal Comments request that the Treasury Department and the IRS engage in consultation with Tribes throughout the development and implementation of the regulations, and any additional guidance. In addition, several of these Tribal Comments request additional consultation before the proposed regulations are published in the **Federal Register**.

The Treasury Department and the IRS agree with the Tribal Comments and expect that consultation will continue throughout the rulemaking process that will culminate with the publication of

final regulations in the **Federal Register**. As noted in the Background section of this preamble, the Treasury Department and the IRS held consultation on the Act and the TTAC Report on December 14, 15, and 16, 2022, and also received comments pursuant to that consultation. These proposed regulations reflect the input from the TTAC Report and the comments received through consultation. The Treasury Department and the IRS also plan to hold consultation after these proposed regulations are issued and will consider comments from that consultation when drafting final regulations. This consultation is in addition to the standard notice and comment process for proposed regulations, which will include the opportunity to participate in a public hearing and to provide comments through <https://www.regulations.gov>. Comments received during these processes will be considered and addressed in the final regulations. Finally, the Treasury Department and the IRS expect to continue discussions with the GWE Subcommittee and the TTAC on all aspects of section 139E.

Proposed Applicability Date

These regulations are proposed to apply to taxable years of Tribal Program Participants that begin on or after the date of publication of the final regulations in the **Federal Register**.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. In addition, the Treasury Department and the IRS request comments on the following specific issues:

(1) Should additional examples be included in the final regulations, and if so, what specific fact patterns or rules should be addressed by the additional examples?

(2) Should Revenue Procedure 2014–35 be obsoleted when the final regulations become applicable? If not, why is there a continuing need for it after the publication of final regulations?

(3) Do Indian Tribal governments anticipate needing any transition relief to adjust existing general welfare programs to satisfy these proposed regulations before they are finalized? If yes, please explain the nature of the transition relief needed and provide

recommendations as to what relief would be helpful to Indian Tribal governments.

(4) Is additional guidance needed under section 139E or other Code sections to address the tax treatment of deferred benefits or benefits paid from trust arrangements, and, if so, what specific fact patterns should be addressed?

Any comments submitted will be made available at <https://www.regulations.gov> or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing will be held on January 13, 2025, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Pursuant to Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), the public hearing is scheduled to be conducted in person, but the IRS will provide a telephonic option for individuals who wish to attend or testify at the hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed as well as the time to be devoted to each topic by December 16, 2024. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by December 16, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number REG–106851–21 and the language TESTIFY In Person. For example, the subject line may say: “Request to TESTIFY In Person at Hearing for REG–106851–21.”

Individuals who want to testify by telephone at the public hearing must

send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–106851–21 and the language TESTIFY Telephonically. For example, the subject line may say: “Request to TESTIFY Telephonically at Hearing for REG–106851–21.”

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have your name added to the building access list. The subject line of the email must contain the regulation number (REG–106851–21) and the language ATTEND In Person. For example, the subject line may say: “Request to ATTEND Hearing In Person for REG–106851–21.” Requests to attend the public hearing must be received by 5 p.m. ET on January 9, 2025.

Individuals who want to attend the public hearing telephonically without testifying must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number (REG–106851–21) and the language ATTEND Hearing Telephonically. For example, the subject line may say: “Request to ATTEND Hearing Telephonically for REG–106851–21.” Requests to attend the public hearing must be received by 5 p.m. ET on January 9, 2025.

The hearing will be made accessible to people with disabilities. To request special assistance during the hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317–6901 (not a toll-free number) at least January 8, 2025.

Special Analyses

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

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian Tribal governments and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive order. These proposed regulations have a substantial direct effect on one or more Federally-recognized Indian Tribes and do impose substantial direct compliance

costs on Indian Tribal governments within the meaning of the Executive order. As a result, the Treasury Department intends to comply with section 5(b)(2)(A)–(B) of Executive Order 13175. In compliance with section 5(b)(2)(A) of Executive Order 13175 and in response to Tribal leader requests for proposed regulations, the Treasury Department and the IRS held consultations with Tribal leaders on December 14, 15, and 16, 2022, requesting assistance in addressing questions related to the Act and the TTAC Report, which informed the development of these proposed regulations. The Treasury Department and the IRS also intend to conduct Tribal consultation on these proposed regulations.

II. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6(b) of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

These proposed regulations would include third-party disclosures and recordkeeping requirements that are required to substantiate that the value of a Tribal General Welfare Benefit is excluded from a recipient's gross income. These collections of information would generally be used by the IRS for tax compliance purposes and by taxpayers to facilitate proper substantiation of the gross income exclusion. The likely respondents to these collections are Indian Tribal governments and individuals.

The recordkeeping requirements in proposed § 1.139E–1(c)(3) would provide that Indian Tribal government programs must be administered under specified guidelines and would provide general requirements on the content of those guidelines. Under proposed § 1.139E–1(c)(3), the specified

guidelines would need to, at a minimum, describe the program, the benefits provided, the eligibility requirements of the program, and the process for receiving benefits. Written specified guidelines would not be required. However, Indian Tribal governments may keep records of affidavits or declarations of how the program operates. These proposed regulations would not prescribe the specific method of keeping these records. Indian Tribal governments should keep these records in the manner they deem appropriate in order to substantiate that the program qualifies as an Indian Tribal government program under section 139E and these proposed regulations, and to assist Tribal program participants with determining that a Tribal general welfare benefit may be excluded from gross income under section 139E and these proposed regulations. Additionally, Indian Tribal governments should keep records they deem appropriate to substantiate that the Tribal general welfare benefits are distributed without discriminating in favor of the governing body of the Tribe, as described in proposed § 1.139E–1(c)(4), are not lavish or extravagant, as described in proposed § 1.139E–1(d)(4), and are not compensation for services, as described in proposed § 1.139E–1(d)(5). This information will generally be used by the IRS for tax compliance purposes to ensure that Indian Tribal governments are distributing Tribal general welfare benefits in accordance with proposed § 1.139E–1.

The recordkeeping requirements in proposed § 1.139E–1(d)(4) would provide that whether a benefit is lavish or extravagant is based on the facts and circumstances at the time the benefit is provided. Proposed § 1.139E–1(d)(4) would provide that a benefit will be presumed not to be lavish or extravagant if the Indian Tribal government establishes the program in writing and provides the benefit in accordance with the program's written specified guidelines. This presumption in proposed § 1.139E–1(d)(4) for a benefit provided in accordance with the program's written specified guidelines would be an optional rule and an Indian Tribal government may choose not to apply such rule. This information will generally be used by the IRS for tax compliance purposes to ensure that Indian Tribal governments are distributing Tribal general welfare benefits in accordance with proposed § 1.139E–1(d)(4).

The third-party disclosure requirement may apply to Indian Tribal governments that choose to provide notification to Tribal program

participants that an Indian Tribal government program exists for which Tribal program participants may apply for benefits. These proposed regulations would not prescribe a specific method that Indian Tribal governments must use to announce the existence of a program. An Indian Tribal government may announce Indian Tribal government programs in any manner it deems appropriate.

These proposed regulations would not impose any additional recordkeeping requirements on Tribal program participants. However, Tribal program participants are required to maintain records under section 6001 sufficient to show that the value of a Tribal general welfare benefit received from an Indian Tribal government program is excludible from gross income. These records are required for the IRS to validate that taxpayers have met the regulatory requirements for a Tribal general welfare benefit, and that taxpayers are entitled to exclude the value of the benefit from gross income. The burden associated with maintaining tax records is already approved under OMB number 1545–0074 that is used for Form 1040, *Individual Tax Return*. These proposed regulations would not create or change the general recordkeeping requirement under section 6001.

There is limited data to calculate the burden estimates for these proposed regulations. The Treasury Department and the IRS estimate the burden based on the list of 574 Federally-recognized Tribes published by the Department of Interior, and estimate an upper bound of 2,296 Indian Tribal governments, including their agencies or instrumentalities. The estimate is based on an upper bound assumption that Indian Tribal government programs are set up by each Indian Tribal government of a Federally-recognized Tribe and by 3 separate agencies or instrumentalities of each such Indian Tribal government. A summary of the Paperwork Reduction Act burden estimates for the collections are as follows:

Indian Tribal governments (third-party disclosure and recordkeeping burden for Tribal entities):

Estimated Number of Respondents: 2,296.

Estimated Time per Response: 2 hours.

Estimated Frequency of Response: Once or on occasion.

Estimated Total Burden Hours: 4,592 hours.

The collections of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for

review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to www.reginfo.gov/public/do/PRAMain, with copies to the Internal Revenue Service. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” then by using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at pra.comments@irs.gov (indicate REG–106851–21 on the subject line). Comments on the collection of information should be received by December 16, 2024. Comments are specifically requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information; how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

IV. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that the proposed regulations would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). These proposed regulations would affect Indian Tribal governments that establish and administer Tribal general welfare programs and that distribute Tribal general welfare benefits to certain individuals. The Treasury Department and the IRS have no reliable data to determine whether Tribal general welfare programs may be established

and administered through small entities, such as not-for-profit entities. Although data is not readily available about the number of small entities that would potentially be affected by these proposed regulations, it is possible that a substantial number of small entities may be affected. However, any impact on those entities would not be economically significant and therefore a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

The impact of these proposed regulations can be described in the following categories. First, proposed § 1.139E–1(c) would provide guidance on what criteria a program must meet in order to be an “Indian Tribal Government Program.” Specifically, proposed § 1.139E–1(c) would provide that the program must be established by the Indian Tribal government; administered under specified guidelines; and not discriminate in favor of members of the governing body of the Tribe. Even assuming that these provisions would affect a substantial number of small entities, they would not have a significant economic impact. Section 139E(b) imposes the burden of what is needed to create an Indian Tribal government program. These proposed regulations would provide deference to Indian Tribal governments on the types of general welfare programs established, and generally defer to Indian Tribal governments on the form of the program’s specified guidelines and the specific records they should maintain. As such, it is expected that the proposed regulations would have a minimal economic impact on Indian Tribal governments.

Second, proposed § 1.139E–1(d) would provide guidance on whether a benefit is a “Tribal General Welfare Benefit” that is excluded from an individual’s gross income. Specifically, proposed § 1.139E–1(d) would require that the benefit be provided pursuant to an Indian Tribal government program; be for the promotion of general welfare; be available to any eligible Tribal program participant; not be lavish or extravagant; and, except as provided in section 139E(c)(5), not be for compensation for services. Proposed § 1.139E–1(d) would provide deference to Indian Tribal governments on the types of benefits that promote the general welfare, the individuals who are eligible for benefits, and whether benefits are provided in exchange for participation in certain cultural or ceremonial activities under section 139E(c)(5) and these proposed regulations. It would also provide that a benefit is presumed to not be lavish or

extravagant if it is described in, and provided in accordance with, the written specified guidelines of an Indian Tribal government program. As such, it is expected that the proposed regulations would have a minimal economic impact on Indian Tribal governments.

Third, proposed § 1.139E–1(e) would permit an Indian Tribal government program to provide to Tribal program participant benefits that are items of cultural significance, reimbursement of costs, or cash honoraria for their participation in certain cultural or ceremonial activities. Indian Tribal governments have broad discretion to determine whether or not these benefits are provided. Even assuming that this provision affects a substantial number of small entities, it would not have a significant economic impact because benefits that are items of cultural significance, reimbursement of costs, and cash honoraria are only a few types of the benefits that are permitted to be provided under section 139E and proposed § 1.139E–1. An Indian Tribal government is not required to provide these types of benefits.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Indian Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Indian Tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless

the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal authors of these proposed regulations are Lisa Mojiri-Azad, Jonathan Dunlap, and Dominic DiMattia, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for §§ 1.139E–1 and 1.139E–2 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * *
Sections 1.139E–1 and 1.139E–2 also issued under 26 U.S.C. 139E.
* * *

■ **Par. 2.** Sections 1.139E–0 through 1.139E–2 are added to read as follows:

* * *
Sec.
1.139E–0 Table of contents.
1.139E–1 Tribal general welfare benefits.
1.139E–2 [Reserved]
* * *

§ 1.139E–0 Table of contents.

This section lists the major captions for §§ 1.139E–1 and 1.139E–2.

§ 1.139E–1 Tribal general welfare benefits.

- (a) Overview.
- (b) Definitions.
- (1) Act.
- (2) Benefit.

- (3) Code.
- (4) Indian Tribal Government.
- (5) Indian Tribal Government Program.
- (6) Tribal General Welfare Benefit.
- (7) Tribe.
- (8) Tribal Program Participant.
- (9) Tribal Member.
- (10) Dependent.
- (c) Indian Tribal Government Program.
- (1) In general.
- (2) Program must be established.
- (3) Program must be administered under specific guidelines.
- (4) Program cannot discriminate in favor of members of the governing body of the Tribe.
- (5) No limitation on source of funds.
- (d) Tribal General Welfare Benefits.
- (1) In general.
- (2) Benefits must be for the promotion of general welfare.
- (3) Benefits must be available.
- (4) Benefits cannot be lavish or extravagant.
- (5) Benefits cannot be compensation for services.
- (e) Cultural or ceremonial activities.
- (1) In general.
- (2) Application
- (3) Examples.
- (f) Audit suspension.
- (g) Applicability date.

§ 1.139E–2 [Reserved]

§ 1.139E–1 Tribal general welfare benefits.

(a) *Overview.* Under section 139E of the Code and this section, the gross income of a Tribal Program Participant for the taxable year does not include the value of any Tribal General Welfare Benefit provided by an Indian Tribal Government Program during the year to or on behalf of the Tribal Program Participant. Paragraph (b) of this section provides definitions that apply for purposes of this section. Paragraph (c) of this section provides the requirements that any program must satisfy to qualify as an Indian Tribal Government Program for purposes of this section. Paragraph (d) of this section provides the requirements that any benefit provided to or on behalf of a Tribal Program Participant must satisfy to qualify as a Tribal General Welfare Benefit for purposes of this section. Paragraph (e) of this section provides special rules related to cultural or ceremonial activities solely for purposes of this section. Paragraph (f) of this section describes the audit suspension provisions in section 4(a) of the Act. Paragraph (g) of this section provides the date of applicability of this section.

(b) *Definitions.* The following definitions apply for purposes of this section—

(1) *Act.* The term *Act* means the Tribal General Welfare Exclusion Act of 2014, Public Law 113–168, 128 Stat. 1883 (2014).

(2) *Benefit.* The term *benefit* means any money, property, services, or other

item of value provided to or on behalf of an individual.

(3) *Code.* The term *Code* means the Internal Revenue Code.

(4) *Indian Tribal Government.* The term *Indian Tribal Government* means an Indian Tribal Government as defined by section 7701(a)(40) of the Code and includes any agencies or instrumentalities of such an Indian Tribal Government.

(5) *Indian Tribal Government Program.* The term *Indian Tribal Government Program* means a program that satisfies the requirements of paragraph (c) of this section.

(6) *Tribal General Welfare Benefit.* The term *Tribal General Welfare Benefit* means any benefit provided to or on behalf of a Tribal Program Participant that satisfies the requirements of paragraph (d) of this section for exclusion from gross income as an “Indian general welfare benefit” under section 139E of the Code.

(7) *Tribe.* The term *Tribe* means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village as defined in 43 U.S.C. 1602(c), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(8) *Tribal Program Participant*—(i) *In general.* The term *Tribal Program Participant* means a Tribal Member, spouse of a Tribal Member within the meaning of § 301.7701–18 of this chapter, spouse of a Tribal Member under applicable Tribal law, dependent of a Tribal Member, or other individual who has been determined by the Indian Tribal Government to be eligible for a Tribal General Welfare Benefit because such individual is, with respect to a Tribal Member, an ancestor, descendant, former spouse, widow or widower, or legally recognized domestic partner or former domestic partner.

(ii) *Special rule for ceremonial or cultural activities.* Solely for purposes of paragraph (e) of this section, the term *Tribal Program Participant* may include a member or citizen of a Tribe that is different from the Tribe that establishes or maintains the Indian Tribal Government Program that provides the Tribal General Welfare Benefit.

(9) *Tribal Member.* The term *Tribal Member* means an individual who is a member or citizen of the Tribe that establishes or maintains the Indian Tribal Government Program because the individual meets the requirements established by applicable Tribal law for enrollment in the Tribe, and:

- (i) Is listed on the Tribal rolls of the Tribe if such rolls are kept;

(ii) Is recognized as a member by the Tribe if Tribal rolls are not kept; or
 (iii) Is an Indian child as defined in 25 U.S.C. 1903.

(10) *Dependent*. The term *dependent* means an individual who—

(i) Is a qualifying child, as defined in section 152 of the Code, of a Tribal Member for the taxable year;

(ii) Is a qualifying relative, as defined in section 152, of a Tribal Member for the taxable year;

(iii) Is a qualifying child or qualifying relative of a Tribal Member described in paragraph (b)(10)(i) or (ii) of this section for the taxable year of the Tribal Member beginning in a calendar year without regard to whether the Tribal Member was a qualifying child or qualifying relative, each as defined in section 152, of another taxpayer for a taxable year of the other taxpayer beginning in that calendar year;

(iv) Is a qualifying child or qualifying relative of a Tribal Member described in paragraph (b)(10)(i) or (ii) of this section for the taxable year of the Tribal Member beginning in a calendar year without regard to whether the individual filed a joint return with the individual's spouse (as defined in section 6013 of the Code) for the taxable year beginning in that calendar year; or

(v) Is a qualifying relative of a Tribal Member described in paragraph (b)(10)(ii) of this section for the taxable year of the Tribal Member beginning in a calendar year without regard to the individual's gross income for the calendar year in which the individual's taxable year begins.

(c) *Indian Tribal Government*

Program—(1) *In general*. A program is an Indian Tribal Government Program only if the program:

(i) Is established by the Indian Tribal Government, as described in paragraph (c)(2) of this section;

(ii) Is administered under specified guidelines, as described in paragraph (c)(3) of this section; and

(iii) Does not discriminate in favor of members of the governing body of the Tribe, as described in paragraph (c)(4) of this section.

(2) *Program must be established*—(i) *In general*. A program must be established by an Indian Tribal Government. A program established by Tribal custom or government practice, or by formal action of the Indian Tribal Government, is a program established by the Indian Tribal Government. Formal action means authorization of the program pursuant to applicable Tribal law. The formal action must be in writing to the extent such writing is required under applicable Tribal law. For example, written documentation

that evidences the formal action of the Indian Tribal Government to establish the program is required if such written documentation is required under applicable Tribal law. Similarly, no written documentation of the formal action of the Indian Tribal Government to establish the program is required if, under applicable Tribal law, no written documentation of such action is required. As an additional example, a program may be established by a voice vote if such voice vote would otherwise constitute formal action of the Indian Tribal Government under applicable Tribal law. To the extent permitted under applicable Tribal law, an Indian Tribal Government may delegate the authority for establishing a program to a designated individual or entity of the Indian Tribal Government.

(ii) *Examples*. The requirements of paragraph (c)(2) of this section are illustrated by the following examples:

(A) *Example 1*. A, a Tribe, operates under the direction of its Indian Tribal Government (the Council). According to the laws of A, all expenditures of A must be approved by a majority of the Council at the Council's annual meeting or by written unanimous consent if the action is taken without a meeting. During the annual meeting of A's Council, a majority of the Council vote to approve establishing a program. A's Council has established the program under paragraph (c)(2)(i) of this section.

(B) *Example 2*. Same facts as in paragraph (c)(2)(ii)(A) of this section (*Example 1*), except that, based on a recommendation from the Tribal Education office, A's Council determines to provide funding for a scholarship program to pay 100% of education related expenses for any Tribal Member who graduates from high school or receives a GED during the calendar year. Because the next Council meeting is scheduled in December 2024, and to avoid potential impact on eligible students, in February 2024, Council adopts by unanimous written consent the following education program:

(1) Approving \$X of funding for the 2024 year for the scholarship program; and

(2) Authorizing the director of the Tribal Education office to use the approved funds for the scholarship program. A's Council has established the education program under paragraph (c)(2)(i) of this section.

(C) *Example 3*. Same facts as in paragraph (c)(2)(ii)(B) of this section (*Example 2*) except that A's Council approves \$X of annual funding to be provided for the education program, and delegates to the Tribal Education office authority to establish a scholarship

program. A's Council has established the education program under paragraph (c)(2)(i) of this section.

(3) *Program must be administered under specified guidelines*. A program must be administered under specified guidelines. The specified guidelines must include, at a minimum, a description of the program to provide Tribal General Welfare Benefits, the benefits provided by the program (including how benefits are determined), the eligibility requirements for the program, and the process for receiving benefits under the program. A program is administered under specified guidelines if the program is operated in accordance with such guidelines. Indian Tribal Governments may choose to, but are not required to, set forth the specified guidelines of the program in writing.

(4) *Program cannot discriminate in favor of members of the governing body of the Tribe*—(i) *In general*. Except in the case of a program described in paragraph (c)(4)(ii) of this section, a program cannot discriminate in favor of members of the governing body of the Tribe. For the purposes of this paragraph (c)(4), a governing body means the legislative body of the Tribe, such as the Tribal Council, or the representative equivalent of the legislative body of the Tribe.

(ii) *General council Tribes*. A program is treated as being in compliance with this paragraph (c)(4) if the governing body of a Tribe consists of the entire adult membership of the Tribe.

(iii) *Facts and circumstances test*. Except in the case of a program described in paragraph (c)(4)(ii) of this section, a program fails to satisfy the requirements of this paragraph (c)(4) if based on all the facts and circumstances the program either by its terms or in its administration discriminates in favor of members of the governing body of the Tribe. Accordingly, a program discriminates in favor of the members of the governing body of the Tribe if the program by its terms is available only to members of the governing body.

Additionally, the administration of a program discriminates in favor of members of the governing body of the Tribe if, based on the facts and circumstances, the benefits provided during the year disproportionately favor members of the governing body. Thus, for example, a program established to provide benefits solely to the children of members of the governing body of the Tribe (unless the Tribe is a general council Tribe) and thus defrays costs otherwise borne by members of the governing body fails to satisfy the requirements of this paragraph (c)(4).

(5) *No limitation on source of funds—*
(i) *In general.* Benefits under the Indian Tribal Government Program may be funded by any source of revenue or funds. For example, an Indian Tribal Government may use funds derived from levies, taxes, and service fees; settlements; revenues from tribally-owned businesses, including casino revenues; funds from Federal, State, or local governments; and funds from other sources, including grants and loans, to provide benefits under an Indian Tribal Government Program.

(ii) *Benefits funded by net gaming revenues.* Benefits under the Indian Tribal Government Program may be funded by net gaming revenues as permitted under the Indian Gaming Regulatory Act, 25 U.S.C. 2701–2721 (IGRA). However, per capita payments, as defined under IGRA, are subject to Federal taxation under IGRA and are not excludable from gross income under section 139E or this section. For purposes of section 139E and this section, a payment is a per capita payment if it is identified by the Indian Tribal Government as a per capita payment in a Revenue Allocation Plan that is approved by the Department of the Interior. See 25 U.S.C. 2710(b)(3) and 25 CFR 290.11.

(d) *Tribal General Welfare Benefits—*
(1) *In general.* A benefit does not qualify as a Tribal General Welfare Benefit unless the benefit is:

(i) Provided pursuant to an Indian Tribal Government Program, as described in paragraph (c) of this section;

(ii) Provided for the promotion of general welfare, as described in paragraph (d)(2) of this section;

(iii) Available to any eligible Tribal Program Participant, as described in paragraph (d)(3) of this section;

(iv) Not lavish or extravagant, as described in paragraph (d)(4) of this section; and

(v) Not compensation for services, as described in paragraph (d)(5) of this section.

(2) *Benefits must be for the promotion of general welfare—*(i) *In general.* Tribal General Welfare Benefits must be for the promotion of general welfare. For purposes of section 139E and this paragraph (d)(2), the Indian Tribal Government determines that a benefit is for the promotion of general welfare at the time it establishes the Tribal General Welfare Program meeting the requirements of paragraph (c) of this section. An Indian Tribal Government has sole discretion to determine whether a benefit is for the promotion of general welfare and the Internal Revenue Service will defer to the Indian

Tribal Government's determination that a benefit is for the promotion of general welfare. Benefits may be provided without regard to the financial or other need of Tribal Program Participants and may be provided on a uniform or pro-rata basis to Tribal Program Participants. Thus, for example, an Indian Tribal Government determines whether benefits are for the promotion of general welfare under programs such as cultural programs, housing assistance programs, programs to provide education benefits, programs for training or retraining to acquire new skills or to obtain better employment opportunities, programs to provide assistance for disasters or emergency situations, funeral or burial assistance programs, legal aid programs, wellness and health-related programs, or any programs that provide benefits to specific categories of individuals, such as elderly individuals or minors.

(ii) *Examples.* The requirements of paragraph (d)(2)(i) of this section are illustrated by the following examples. For the examples in this paragraph (d)(2)(ii), assume the Indian Tribal Government has determined that the benefits provided are for the promotion of general welfare.

(A) *Example 1: Housing programs.* Indian Tribal Government A administers a program, B, pursuant to which the following benefits are provided in connection with A's Tribal Members' principal residences and ancillary structures which are not used in any trade or business: payments for Tribal Members to use to make mortgage payments, down payments, and rent payments (including but not limited to security deposits); payments for Tribal Members to enhance habitability of housing, such as by remedying water, sewage, sanitation service, safety (including but not limited to mold remediation), and heating or cooling issues; payments for Tribal Members to provide for basic housing repairs or rehabilitation (including but not limited to roof repair and replacement); and payments to Tribal Members to pay utility bills and charges (including but not limited to water, electricity, gas, and basic communications services such as phone, internet, and cable). The payments made by A under B are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(B) *Example 2: Educational programs.* Indian Tribal Government C administers a program, D, pursuant to which the following benefits are provided: provision to students (including but not limited to post-secondary students) of transportation to and from school, tutors, and supplies (including but not

limited to clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities; tuition payments for students (including but not limited to allowances for room and board on or off campus for the student, spouse, domestic partner, and dependents) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education; provision of care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and provision of job counseling and programs for which the primary objective is job placement or training, including but not limited to allowances for expenses for interviewing or training away from home (including but not limited to travel, auto expenses, lodging, and food), tutoring, and appropriate clothing for a job interview or training (including but not limited to an interview suite or a uniform required during a period of training). The payments made by C under D are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(C) *Example 3: Elder and disabled programs.* Indian Tribal Government E administers a program, F, pursuant to which the following benefits are provided to Tribal Members who have attained age 55 or are mentally or physically disabled (as defined under applicable law, including but not limited to an Indian Tribal Government's disability laws): meals through home-delivered meals programs or at a community center or similar facility; home care such as assistance with preparing meals or doing chores, or day care outside the home; local transportation assistance; and improvements to adapt housing to special needs (including but not limited to grab bars and ramps). The payments made by E under F are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(D) *Example 4: Transportation programs.* Indian Tribal Government G administers a program, H, pursuant to which the following benefits are provided: payment of transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between an Indian reservation (as defined in section 168(j)), service area (as defined in 25 CFR 20.100), or service unit area (meaning an area designated for

purposes of administration of Indian Health Service programs under 42 CFR 136.21(1)) and facilities that provide essential services to the public (such as medical facilities and grocery stores). The payments made by G under H are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(E) *Example 5: Medical programs.* Indian Tribal Government J administers a program, K, pursuant to which the following benefits are provided: payments for the cost of transportation, temporary meals, and lodging of a Tribal Program Participant while the individual is receiving medical care away from home, or to pay the cost of nonprescription drugs (including but not limited to traditional Tribal medicines). The payments made by J under K are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(F) *Example 6: Emergency programs.* Indian Tribal Government L administers a program, M, pursuant to which the following benefits are provided: assistance to individuals in exigent circumstances (including but not limited to victims of abuse), including but not limited to the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses; payment of costs for temporary relocation and shelter for individuals involuntarily displaced from their homes (including but not limited to situations in which a home is destroyed by a fire or natural disaster); and assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals. The payments made by L under M are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(G) *Example 7: Cultural and religious programs.* Indian Tribal Government N administers a program, P, pursuant to which the following benefits are provided: payment of expenses (including but not limited to admission fees, transportation, food, and lodging) to attend or participate in a Tribe's cultural, social, religious, or community activities, such as powwows, ceremonies, and traditional dances; payment of expenses (including but not limited to admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Tribe, including but not limited to other Indian reservations (as defined in section 168(j)); payment of the costs of receiving instruction about a Tribe's culture, history, and traditions

(including but not limited to traditional language, music, and dances); payment of funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and payment of transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Tribe or another Tribe. The payments made by N under P are for the promotion of general welfare as described in paragraph (d)(2)(i) of this section.

(3) *Benefits must be available.* The benefits provided under an Indian Tribal Government Program must be available to any Tribal Program Participant who meets the specified guidelines of the program required under paragraph (c)(3) of this section, subject to budgetary constraints. However, the Indian Tribal Government has discretion to determine the category of individuals who are Tribal Program Participants under the Indian Tribal Government Program, provided that such determination is consistent with the specified guidelines described in paragraph (c)(3) of this section and subject to the prohibition on discrimination under paragraph (c)(4) of this section. Thus, for example, an Indian Tribal Government is permitted to limit eligibility for an Indian Tribal Government Program to dependents of Tribal Members who have attained a specified age, or, as another example, to a Tribal Member's household.

(4) *Benefits cannot be lavish or extravagant.* The benefit provided by an Indian Tribal Government Program cannot be lavish or extravagant. Whether a benefit is lavish or extravagant for purposes of this section is based on the facts and circumstances at the time the benefit is provided. Relevant facts and circumstances include a Tribe's culture and cultural practices, history, geographic area, traditions, resources, and economic conditions or factors. A benefit will be presumed to not be lavish or extravagant if it is described in, and provided in accordance with, the written specified guidelines of an Indian Tribal Government Program.

(5) *Benefits cannot be compensation for services.* Except as provided in paragraph (e) of this section, a Tribal General Welfare Benefit does not include benefits that are provided as compensation for services to any person. Under section 61(a) of the Code, compensation for services includes fees, commissions, fringe benefits, and similar items, whether paid in money or property.

(e) *Cultural or ceremonial activities—*
(1) *In general.* For purposes of section 139E and paragraph (d)(5) of this section, a benefit is not compensation for services if:

(i) The benefit is provided to a Tribal Program Participant for their participation in cultural or ceremonial activities for the transmission of Tribal culture as determined by the Indian Tribal Government (including, but not limited to, powwows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and honoring events); and

(ii) The benefit consists of an item of cultural significance as determined by the Indian Tribal Government, the reimbursement of costs, or a cash honorarium.

(2) *Application.* Except as otherwise provided in this paragraph (e)(2), an Indian Tribal Government has sole discretion to determine whether an item is an item of cultural significance and whether an activity is a cultural or ceremonial activity, and the Internal Revenue Service will defer to these determinations by the Indian Tribal Government. However, cash, gift cards, or vehicles are generally not items of cultural significance.

(3) *Examples.* The application of this paragraph (e) is illustrated by the following examples:

(i) *Example 1: Benefits for cultural or ceremonial activities not compensation for services.* Tribe B regularly holds a gathering during the fall season to celebrate its cultural traditions. During the gathering, Tribal Members of B, as well as Tribal members of other Tribes from around the region, are invited to participate. The Indian Tribal Government of B (ITG-B) allocates funds for the gathering, some of which are used for the following payments:

(A) *Tribal Member of B.* Individual 1, a Tribal Member of B, provides traditional blessings on the first and final days of the gathering. ITG-B gives Individual 1 a cash honorarium in recognition of providing the blessings. The cash honorarium that Individual 1 receives from ITG-B is not compensation for services under this paragraph (e).

(B) *Tribal Member of different Tribe.* Individual 2, a Tribal Member of Tribe C, participates as a drummer for a ceremonial dance on the second day of the gathering. ITG-B gives Individual 2 a piece of culturally significant jewelry. Under paragraph (a)(7)(ii) of this section, Individual 2 is a Tribal Program Participant solely for purposes of this paragraph (e). The jewelry that Individual 2 receives from ITG-B is not

compensation for services under this paragraph (e).

(ii) *Example 2: Benefits for cultural or ceremonial activities not compensation for services.* Tribe C operates a language preservation center in which Individual 3, a Tribal Member of C, who speaks the traditional language that is common to C and other regional Tribes, volunteers to come in every Saturday to discuss and teach the traditional language of C to other Tribal Members of C. The Indian Tribal Government of C (ITG-C), reimburses Individual 3 for travel expenses and teaching supplies used in Individual 3's language lessons. The reimbursement of costs that Individual 3 receives from ITG-C is not compensation for services under this paragraph (e).

(f) *Audit suspension.* After [date of publication of the final regulations in the **Federal Register**], the Department of the Treasury and the Internal Revenue Service (IRS) will, in consultation with the Treasury Tribal Advisory Committee, establish and require the education and training prescribed in section 3(b)(2) of the Act. The temporary suspension of audits and examinations described in section 4(a) of the Act will not be lifted until the education and training prescribed by section 3(b)(2) of the Act is completed.

(g) *Applicability date.* This section applies to taxable years of Tribal Program Participants that begin on or after [date of publication of the final regulations in the **Federal Register**].

§ 1.139E-2 [Reserved]

Douglas W. O'Donnell,
Deputy Commissioner.

[FR Doc. 2024-20826 Filed 9-13-24; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2023-0472; FRL-12252-01-R8]

Air Plan Approval; Montana; Missoula, Montana, Air Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Montana on January 30, 2024, that incorporates revisions to the Missoula, Montana City-County Air Pollution

Control (MCCAPC) program rules into the Montana SIP. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 17, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2023-0472, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.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://www2.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 is not publicly available, *e.g.*, 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 electronically in <https://www.regulations.gov>. For this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Joseph Stein, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone number: (303) 312-7078, email address: stein.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

On January 30, 2024, the State of Montana submitted proposed revisions to the MCCAPC rules for incorporation into the Montana SIP.¹ The MCCAPC rules address open burning, industrial and household combustors, and other activities that generate particulate matter emissions. The submittal was signed by the governor and went through a 30-day public comment period starting on Thursday, September 7, 2023, and ending on Monday, October 9, 2023.² Montana received no requests for public hearing and all comments received were in favor of the revised MCCACP rules and their incorporation into the Montana SIP. In this action, we are proposing to approve certain revisions and to take no action on certain revisions, as described in greater detail below.

The EPA has reviewed the revisions to Chapters 1 through 9, and Chapters 13 and 14 of the MCCAPC rules. The bulk of the changes are administrative in nature, including formatting and grammatical corrections, conforming edits to create consistency across the MCCAPC, deletions of extraneous or repetitive content, removal of outdated references to a retired outdoor burn hotline, and similar edits. Additionally, there are several revisions that are substantive in nature, including new definitions for outdoor burning air pollution control technologies, provisions for the use of such control technologies, new limits on outdoor recreational fires, and the extension of wood stove rules to new areas around Missoula, among others. The EPA has determined that both the administrative and substantive revisions are consistent with the requirements of the CAA. These substantive revisions either have no effect on, or further restrict, particulate matter emissions.

The EPA will not be acting on the rules submitted for revision in MCCAPC Chapter 10: *Fuels* rules 10.102(1), 10.105(1), 10.109(1), 10.110, 10.111, 10.111(2). The EPA is proposing to act on the revisions in Chapter 10 in a separate action.

II. Proposed Action

In this action, the EPA is proposing to approve the revisions to the MCCACP rules submitted by the State of Montana on January 30, 2024, listed below in table 1, Chapters 1 through 9 and Chapters 13 and 14.

In the table below, the key is as follows:

¹ See MDEQ Missoula Submission Receipt—01.30.24 in docket.

² See Montana January 30, 2024, submittal, p. 98.

A—Approve.

N—No action.

TABLE 1—SUMMARY OF REVISIONS TO THE MISSOULA CITY-COUNTY AIR POLLUTION CONTROL PROGRAM, PROPOSED FOR APPROVAL

Revisions to the Missoula City-County Air Pollution Control Program (MCCAPC) ¹		
MCCAPC chapter	MCCAPC rule(s): description of revision(s)	EPA proposal
Chapter 1: Program Authority and Administration.	1.105(5): Grammatical correction	A
Chapter 2: Definitions	2.101(22): Update hazardous waste definition, consistency with state rule 2.101(23): Removes Flathead Reservation from Impact Zone M definition (no MCCAC program jurisdiction on Flathead Reservation). 2.101(49): Grammatical correction.	A
Chapter 3: Failure to Attain Standards.	3.101: Corrected wording	A
Chapter 4: Missoula County, Air Stagnation and Emergency Episode Avoidance Plan.	3.103: Reference correction. 4.104(1–4): Formatting and spelling correction 4.108(1): Grammatical correction 4.108(2)(a): Corrected wording 4.108(2)(d): Rule addition, requires recreational fires to comply with Chapter 7 applicable requirements and restrict fires in certain areas during air alerts. 4.109(2)(d): Rule addition, requires recreational fires to comply with Chapter 7 applicable requirements and restrict fires in certain areas during air warnings. 4.109(4): Formatting correction. 4.113: Grammatical correction.	A
Chapter 5: General Provisions	5.108(1): MCCAPC board fee change clarification 5.108(2): Removes extraneous content. 5.111(1): Adds Montana state requirements for local air program rules into MCCAPC rules. 5.111(2): Revision to create consistency with rule 5.111(1).	A
Chapter 6: Standards for Stationary (Industrial) Sources.	6.103(4): Revision allows for up to two, 12-month extensions on air quality permit when construction, installation or alteration was not completed within 36 months of initial issuance of air quality permit. 6.107(1): Punctuation correction. 6.505(2): Formatting correction.	A
Chapter 7: Outdoor Burning	6.604: Correction for consistency with state rules. 7.101(1–13): Renumbering to 7.101(3–15) 7.101(1): Definition added for air curtain burners. 7.101(2): Definition added for air curtain destructors. 7.101(4): Removes references to outdoor burning hotline, department outdoor burning restrictions requirement remains. 7.101(11): Clarification that recreational fires burning gaseous fuel are not considered outdoor burning. 7.101(13): Punctuation correction. 7.102(1): Pronoun correction. 7.104(1): Removes wildland burning from year-round activities list and updates letters for consistency with the removal of point (a). 7.104(4): Clarification and specification when prescribed woodland burning can be done. 7.104(5): Renumbering. 7.105(1): Formatting correction. 7.105(2): Removes redundant language. 7.105(3): Replaces outdoor burning hotline as departmental mechanism to announce burn restrictions with the departmental website. 7.106(2)(b): Language update. 7.107(3)(c): Removes reference to outdoor burn hotline. 7.107(6): Specifies process major burners may use to conduct wildland outdoor burning, includes requirement for written request to department in winter months. 7.110(1)(d): Revision allows for outdoor burning of natural vegetation generated offsite to be granted a conditional outdoor burning permit if burning occurs with temporary use of air curtain burner or air curtain destructor. 7.110(2)(c): Revision allows for exception for conditional outdoor burning permits to be issued inside the air stagnation zone if the burning takes place with an air curtain burner or air curtain destructor. 7.110(6)(c): Revision specifies that permits issued under rule for natural vegetation burning in air curtain burner or air curtain destructor is valid for up to one year. 7.116: Rule added to limit recreational fires during air pollution alerts, warnings, emergencies and crises.	A
Chapter 8: Fugitive Particulate	8.203(3)(b–c): Reference correction 8.203(3)(e): Removal of an extra word. 8.208(1): Revision allows health department to approve alternative areas for paving the same size and usage as an area required to be paved by other sections of chapter 8.	A
Chapter 9: Solid Fuel Burning Devices (Wood Burning Stoves).	9.102(3): Defines ‘central heater’ 9.102(6): Revision changes ‘EPA method’ definition to include all parts of subpart AAA and adds 40 CFR part 60, subpart QQQQ.	A

TABLE 1—SUMMARY OF REVISIONS TO THE MISSOULA CITY-COUNTY AIR POLLUTION CONTROL PROGRAM, PROPOSED FOR APPROVAL—Continued

Revisions to the Missoula City-County Air Pollution Control Program (MCCAPC) ¹		
MCCAPC chapter	MCCAPC rule(s): description of revision(s)	EPA proposal
	9.102(10): Addition of Seeley Lake Wood Stove Zone definition. 9.102(11): Addition of word 'disposal' to solid fuel burning device definition. 9.102(4–10): Renumbering. 9.102(12–14): Renumbering. 9.201(1): Word addition for clarification. 9.203(1): Addition that wood pellet boilers can be installed in air stagnation zone. 9.203(2): Spelling correction. 9.204: Addition of rules that specifies which solid fuel burning devices may be installed in the Seeley Lake Wood Stove Zone. 9.205: Renumbered rule, updated for consistency with 2015 New Source Performance Standards for wood stoves, does not apply to new solid fuel burning devices installed in the Missoula air stagnation zone and, or the Seeley Lake Wood Stove Zone. 9.205(4): Edited for clarification. 9.206–9.212: Renumbering. 9.207(3): Word addition for clarification. 9.207(7): Word addition for clarification. 9.401(3): Update to list of applicable rules. 9.501(1): Revision requires removal of solid fuels burning devices when property is sold, transferred or conveyed, applies to inherited property and other changes of ownership. 9.501(2): Revision replaces word 'sold' with words 'sold, transferred or conveyed', removes grandfathering of class I wood stoves installed between 1986 and 1994. 9.501(3–8): Deleted, form no longer required when property is sold, transferred or conveyed in the Missoula air stagnation zone. 9.601: Grammatical correction.	
Chapter 10: Fuels ² .....	.....	N
Chapter 13: Variances	13.104: Spelling correction	A
Chapter 14: Enforcement and Administrative Procedures.	14.107(1): Revision specifies 15-day time limit for hearing request of control board if there is a disagreement on administrative conclusion, decision. 14.107(2): Spelling correction	A

¹ See Montana January 30, 2024, submittal, pp. 145–148 for additional detail on rule revision descriptions.

² The EPA will not be acting on the rules submitted for revision in MCCAPC Chapter 10: *Fuels* and is proposing to act on revisions in Chapter 10 of the MCCAPC rules in a separate action. See Montana January 30, 2024, submittal, pp. 147–148 for additional detail on Chapter 10 rule revision descriptions.

III. Environmental Justice Considerations

This is a proposed action to incorporate revisions to the MCCAPC program rules into the Montana SIP. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. At a minimum, this action will not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the MCCAPC rules in Montana's January 30, 2024,

submission; Chapters 1 through 9 and Chapters 13 and 14 into the Montana SIP, as discussed in sections I. and II. of this preamble. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve 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 they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: September 11, 2024.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2024–20997 Filed 9–16–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[GN Docket No. 20–32; FCC 24–89; FR ID 243903]

Establishing a 5G Fund for Rural America

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) seeks comment on whether to require a winning bidder in the 5G Fund Phase I auction to demonstrate during the long-form application process that it has obtained the consent of the relevant Tribal government(s) for any necessary access to deploy network facilities using its 5G Fund support on Tribal lands within the area(s) of its winning bid(s).

DATES: Comments are due on or before October 17, 2024; reply comments are due on or before November 1, 2024.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. You may submit comments, identified by GN Docket No. 20–32, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service Express Mail. All filings must be addressed to the Secretary, Federal Communications Commission.

- Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

- **People With Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format) send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0530.

FOR FURTHER INFORMATION CONTACT:

Kelly Quinn of the Office of Economics and Analytics, Auction Division, at (202) 418–0660 or Kelly.Quinn@fcc.gov, or Valerie Barrish of the Office of Economics and Analytics, Auction Division, at (202) 418–0354 or Valerie.Barrish@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Second Further Notice of Proposed Rulemaking (Second FNPRM)* in GN Docket No. 20–32, FCC 24–89, adopted on August 14, 2024 and released on August 29, 2024. The full text of this document is available for public inspection at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-24-89A1.pdf>.

Providing Accountability Through Transparency Act. Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this Notice of Proposed Rulemaking will be available on <https://www.fcc.gov/proposed-rulemakings>.

Synopsis

1. In the *Second FNPRM*, the Commission seeks comment on whether to require a winning bidder in the 5G Fund Phase I auction to demonstrate during the long-form application process, and prior to being authorized to receive support, that it has obtained the consent of the relevant Tribal government(s) for any necessary access to deploy network facilities using its 5G Fund support on Tribal lands within the area(s) of its winning bid(s). For purposes of a requirement such as this, the Commission would follow the long-standing precedent articulated in its

Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes (Policy Statement), 16 FCC Rcd 4078 (2020), of using the term “Tribal Government” to mean “the recognized government of an Indian Tribe that has been determined eligible to receive services from the Department of Interior, Bureau of Indian Affairs.” The term “Indian Tribe,” in turn, is defined in the *Policy Statement* to mean “any Indian or Alaska Native tribe, band, nation, pueblo, village or community which is acknowledged by the federal government to constitute a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians.” The Commission recognizes that the definition of “Tribal lands” adopted by the Commission for the 5G Fund in the *5G Fund Report and Order*, 85 FR 75770 (Nov. 25, 2020), may not fully align with a Tribal Government’s jurisdiction for purposes of providing Tribal consent for all of the areas within a particular winning bid. In that circumstance, a winning bidder would nonetheless need to obtain Tribal consent for any area(s) within the area of a winning bid for which the relevant Tribal Government has jurisdiction to grant such consent before we would award support for that particular winning bid.

2. In its reply comments concerning the *5G Fund Further Notice of Proposed Rulemaking*, 88 FR 66781 (Sept. 28, 2024), National Tribal Telecommunications Association (NTTA) supports the adoption of a Tribal consent requirement during the long-form process and before the Commission authorizes any 5G Fund support to serve Tribal lands.

3. The Commission seeks comment on whether including a Tribal consent requirement would advance the goals of the 5G Fund and would be administratively efficient for all parties and the Commission. The Commission tentatively concludes that adopting a Tribal consent requirement in its 5G Fund rules is consistent with its long-standing recognition that engagement between Tribal governments and communications providers, particularly early engagement, is an important element to promote the successful deployment and provision of service on Tribal lands.

4. In seeking comment on this issue, the Commission asks commenters to provide input on how it can best assess an applicant’s eligibility to be authorized to receive 5G Fund support for the purpose of deploying network facilities that would enable 5G mobile broadband service located on Tribal

lands, while incorporating Tribal government consent into the Commission’s approval process. The Commission notes that, under the Broadband Equity, Access, and Deployment (BEAD) Program, “an Eligible Entity may not treat as ‘unserved’ or ‘underserved’ any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband” and a commitment to deploy broadband will not be considered an enforceable commitment “unless it includes a legally binding agreement, which includes a Tribal Government Resolution, between the Tribal Government of the Tribal Lands encompassing that location, or its authorized agent, and a service provider offering qualifying broadband service to that location.” Does including a requirement for a winning bidder to demonstrate that it has obtained Tribal consent during the 5G Fund Phase I long-form application process ensure that evidence of Tribal government consent will be included in the Commission’s process of authorizing the winning bidder to receive support? Does such a requirement also provide such evidence during a 5G Fund support recipient’s deployment of network facilities to provide 5G mobile broadband service that are located on Tribal lands?

5. The Commission envisions that any Tribal consent requirement it may adopt for the 5G Fund will be a continuation of the Commission’s commitment to ensuring Tribal engagement by service providers that receive high-cost universal service support and in furtherance of the Commission’s Policy Statement establishing a government-to-government relationship with Tribes. In the *Policy Statement*, the Commission stated that it “recognizes the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions.” Most recently, in the *Enhanced Alternative-Connect America Cost Model Report and Order (Enhanced A-CAM Report and Order)*, 88 FR 55918 (Aug. 17, 2023), the Commission recognized “the deep digital divide that persists between Tribal lands and the rest of the country and emphasized that engagement between Tribal governments and communications providers, either currently providing service or contemplating the provision of service on Tribal lands, is vitally

important to the successful deployment and provision of service.”

6. As the Commission explained in the *Enhanced A-CAM Report and Order*, the rules governing the disbursement of high-cost universal service support already include an annual requirement for high-cost recipients whose support areas include Tribal lands to undertake Tribal engagement. Pursuant to § 54.313(a)(5) of the Commission’s rules, 47 CFR 54.313(a)(5), a recipient of high-cost support that serves Tribal lands must demonstrate that it has engaged with the relevant Tribal government on a range of issues, including compliance with local rights of way, land use permitting, facilities siting, and environmental and cultural preservation review processes, as well as Tribal business and licensing requirements, that are necessary for a carrier to obtain. The Commission also has historic preservation requirements. See 47 CFR 1.1305–1.1320; 47 CFR 17.4; 47 CFR part 1, Appendix B and C. The Commission also reasoned in the *Enhanced A-CAM Report and Order* that “[t]hrough these obligatory Tribal engagements, and as demonstrated through successfully satisfying the deployment obligations through previous high-cost programs, carriers receiving high-cost support through previous universal service programs should have received consent from the local Tribal government to satisfy the requisite permissions to deploy to certain locations.” Building on its existing rules, and in order to leverage any preexisting coordination and collaboration obligations that a service provider has with a Tribal government to complete the deployment required by the Enhanced A-CAM program, the Commission also determined that it would require carriers receiving Enhanced A-CAM support to initiate engagement with any relevant Tribal government within 90 days of the Wireline Competition Bureau extending an Enhanced A-CAM offer in the *Enhanced A-CAM Report and Order*. In so doing, the Commission explained that it expects “carriers that intend to accept Enhanced A-CAM offers will act in good faith to provide the relevant Tribe(s) with an opportunity to consent to the Enhanced A-CAM carrier’s deployment of broadband in the Tribal area.”

7. Referencing the Tribal engagement rules the Commission adopted in the Enhanced A-CAM proceeding, NTTA states “[a] similar process for the 5G Fund is perhaps even more important due to the structure of the 5G Fund award system (reverse auction) and the fact that, as it now stands, any provider

may bid on eligible Tribal areas.” The Commission is mindful that, as NTTA advocates, a similar or even more developed process for the 5G Fund may be appropriate because, whereas an Enhanced A–CAM carrier already had a history of tribal engagement, in the 5G Fund Phase I auction any applicant may bid on support to serve eligible Tribal areas. Given the potential challenges that incorporating a Tribal consent requirement might raise in the 5G Fund long-form application process, should the Commission consider following the same Tribal engagement approach as the Commission adopted in the *Enhanced A–CAM Report and Order*? Are the provisions included in the Enhanced A–CAM and/or the BEAD programs good analogues for the 5G Fund, given the differences between fixed service and mobile service? Are there other alternatives that the Commission should consider that would result in more equitable and informed outcomes in connection with using 5G Fund support to fund proposed projects to provide advanced, 5G mobile broadband service using facilities that would be located on Tribal lands that would benefit Tribal communities and serve the public interest? Should the Commission use existing high-cost universal service Tribal engagement requirements to develop the criteria necessary to evidence Tribal consent in order to provide more consistency and predictability for both Tribal governments and service providers during the 5G Fund long-form application authorization process?

8. If the Commission adopts a Tribal consent requirement during the 5G Fund long-form application process, how could it structure a requirement for a 5G Fund Phase I auction winning bidder to demonstrate during the long-form application process, and prior to being authorized to receive support, that it has obtained the relevant Tribal government’s consent? Given Tribal sovereignty, how should the Commission address circumstances in which a Tribal government neither declines nor provides consent? How might the Commission use existing Tribal engagement requirements to assess the winning bidder’s efforts to obtain Tribal consent? What are the costs and burdens of such requirements to providers? How might they be expected to influence auction participation or bidding for support in Tribal lands? As the Commission considers how to frame a requirement for Tribal consent, it also seeks comment on whether it should include parameters similar to the those that the

Commission includes for a winning bidder that is applying for a Tribal Land Bidding Credit (TLBC) to demonstrate its compliance with any Tribal consent requirement the Commission may adopt.

9. For instance, using the TLBC requirements as a guide, the Commission could include a requirement that within 180 calendar days after the filing deadline for a 5G Fund long-form application, an applicant seeking 5G Fund support to provide service on Tribal lands must amend its application to submit a certification from the Tribal government(s) that it has granted any required Tribal consent. *See* 47 CFR 1.2110(f)(3)(ii)(A). In particular, the Commission could require that the certification of Tribal consent include: the signature of an official of the Tribal Government and their title; a statement that the Tribal government has not and will not enter into an exclusive contract with the applicant to preclude entry by other carriers and will not unreasonably discriminate among wireless carriers seeking to provide service on the eligible Tribal land; and a statement that the Tribal government will, as applicable, permit the applicant to locate and deploy facilities on the Tribal land consistent with the 5G Fund public interest obligations and performance requirements. The Commission’s existing 5G Fund long-form application rules already require an applicant to certify that it will comply with all 5G Fund program requirements, including its public interest obligations and performance requirements, in the areas for which it is a winning bidder, including any such areas that are on Tribal lands. *See* 47 CFR 54.1014(b)(2)(vii). Would using the TLBC certification model, together with this existing long-form application certification required of an applicant seeking to be authorized for 5G Fund support, adequately reflect the contours of Tribal government consent in this context? Under this model, once the certifications from the applicant and the consent of the Tribal government(s) being served are received and reviewed by the Commission and determined to be consistent with the 5G Fund rules, 5G Fund support may be authorized. Should the Commission consider revising the TLBC certification parameters for the purposes of the 5G Fund? Should the Commission include any additional provisions to demonstrate Tribal consent if it adopts such a requirement? Should the Commission require fewer or alternative provisions? Should a process such as

the TLBC certification process be adopted, the Commission seeks comment on how it might be able to incorporate flexibility in such a process.

10. In the event that the Commission adopts a Tribal consent requirement for the 5G Fund Phase I auction long-form application process, how can it ensure that consent is valid throughout the term of support? Should a winning bidder’s failure to obtain Tribal consent be considered an auction default under the Commission’s existing rules? Should there be additional or alternative compliance or enforcement mechanisms?

11. Finally, if the Commission adopts a Tribal consent requirement for the 5G Fund, how can it assist in dispute resolution in the event that a Tribal government reconsiders its consent? Would the Commission need to adopt a specific Tribal consent dispute resolution process? Commenters should address any other issues the Commission should consider in adopting rules related to a Tribal consent requirement for a 5G Fund Phase I auction long form applicant to demonstrate that it has obtained the consent of the relevant Tribal government(s) for any necessary access to deploy network facilities using its 5G Fund support on Tribal lands within the area(s) of its winning bid(s).

12. Are there any reasons why the Commission should decline to adopt such a requirement? Should the Commission consider requiring something less than Tribal consent (*e.g.*, a different type of engagement than the current requirement in § 54.313(a)(5) of the Commission’s rules, 54 CFR 313(a)(5))?

Procedural Matters

13. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Second FNPRM* to supplement the Commission’s Regulatory Flexibility Analyses completed in the *5G Fund NPRM*, 85 FR 31616 (May 26, 2020), *5G Fund Report and Order*, *5G Fund FNPRM*, and *5G Fund Second Report and Order and Order on Reconsideration*. The Commission requests written public comment on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments on the

Second FNPRM. The Commission will send a copy of the *Second FNPRM*, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

14. The Commission seeks comment in the *Second FNPRM* on whether to require a winning bidder in the 5G Fund Phase I auction to demonstrate during the long-form application process, and prior to being authorized to receive support, that it has obtained the consent of the relevant Tribal government(s) for any necessary access to deploy network facilities using its 5G Fund support on Tribal lands within the area(s) of its winning bid(s). The Commission seeks comment on whether including a Tribal consent requirement would advance the goals of the 5G Fund and would be administratively efficient for all parties and the Commission. The Commission tentatively concludes that adopting a Tribal consent requirement in its 5G Fund rules is consistent with its long-standing recognition that engagement between Tribal governments and communications providers, particularly early engagement, is an important element to promote the successful deployment and provision of service on Tribal lands. In seeking comment on this issue, the Commission asks commenters to provide input on how it can best assess an applicant's eligibility to be authorized to receive 5G Fund support for the purpose of deploying network facilities that would enable 5G mobile broadband service located on Tribal lands, while incorporating Tribal government consent into the Commission's approval process.

15. The proposed action is authorized pursuant to sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), and 403, and §§ 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1 and 1.421.

16. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A "small-business concern" is one 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.

17. Regulatory Flexibility Analyses were incorporated into the *5G Fund*

NPRM, *5G Fund Report and Order*, *5G Fund FNPRM*, and *5G Fund Second Report and Order and Order on Reconsideration*. In those analyses, the Commission described in detail the small entities that might be significantly affected. In this Supplemental IRFA, the Commission hereby adopts by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *5G Fund NPRM*, *5G Fund Report and Order*, *5G Fund FNPRM*, *5G Fund Report and Order*, *5G Fund FNPRM*, and *5G Fund Second Report and Order and Order on Reconsideration*.

18. In the *5G Fund Report and Order*, the Commission adopted requirements for winning bidders to submit a post-auction long-form application in which they must submit ownership, agreement, and spectrum access information, as well as information about their qualifications, funding, and the networks they intend to use to meet their 5G Fund public interest obligations and performance requirements. In the *Second FNPRM*, the Commission seeks comment on whether to add to the existing long-form application requirements a requirement that a winning bidder in the 5G Fund Phase I auction demonstrate during the long-form application process that it has obtained the consent of the relevant Tribal government(s) for any necessary access to deploy network facilities using its 5G Fund support on Tribal lands within the area(s) of its winning bid(s). If the Commission ultimately adopts a rule that would amend its existing rules to require that 5G Fund Phase I auction winning bidders make this demonstration during the long-form application process, it would impact the reporting, recordkeeping, and other compliance requirements for small business and other carriers that apply for 5G Fund support to serve Tribal lands within the area(s) of their winning bid(s).

19. In assessing the cost of compliance for small entities, record does not include a detailed cost-benefit analysis that would allow the Commission to quantify such costs, including whether small entities will be required to hire professionals, and therefore cannot currently quantify the cost of compliance resulting from an adopted requirement that winning bidders demonstrate during the long-form application process that they have obtained the consent of the relevant Tribal government(s) for any necessary access to deploy network facilities using its 5G Fund support on Tribal lands within the area(s) of their winning

bid(s). The Commission anticipates, however, that the comments the Commission receives will discuss the compliance costs or burdens resulting from any potential changes to the long-form application rules, and may help the Commission identify and evaluate other relevant compliance matters for small entities associated with this possible requirement, should changes be adopted in this proceeding.

20. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities 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 such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

21. The Commission has taken steps to minimize any economic impact from a potential requirement that a winning bidder in the 5G Fund Phase I auction demonstrate during the long-form application process that it has obtained the consent of the relevant Tribal government(s) for any necessary access to deploy network facilities using its 5G Fund support on Tribal lands within the area(s) of its winning bid(s) on small entities. For example, given the potential challenges that incorporating a Tribal consent requirement might raise in the 5G Fund long-form application process, the Commission seeks comment in the *Second FNPRM* on whether it should consider following the same Tribal engagement approach used by the Commission in the Enhanced A-CAM program, rather than adopting a Tribal consent requirement. The Commission also asks in the *Second FNPRM* whether there are other alternatives to a Tribal consent requirement we should consider that would result in more equitable and informed outcomes in connection with using 5G Fund support to fund proposed projects to provide advanced, 5G mobile broadband service using facilities that would be located on Tribal lands that would benefit Tribal communities and serve the public interest.

22. The Commission likewise seeks comment in the *Second FNPRM* on how it could structure a potential requirement for a 5G Fund Phase I

auction winning bidder to demonstrate during the long-form application process that it has obtained the relevant Tribal government's consent and, for example, whether we should include parameters similar to the those that the Commission includes for a spectrum auction winning bidder that is applying for a Tribal land bidding credit (TLBC) for a 5G Fund winning bidder to demonstrate its compliance with any Tribal consent demonstration requirement the Commission may adopt. The Commission also seeks comment on whether, if it were to include parameters similar to the those that the Commission includes for a spectrum auction winning bidder that is applying for a Tribal land bidding credit in any such 5G Fund Tribal consent requirement it may adopt, whether it should include all of the TLBC certification parameters for the purposes of the 5G Fund or, alternatively, whether it should adopt additional or fewer provisions than required for spectrum auction winning bidders seeking a TLBC. Further, the Commission seeks comment on how it might be able to incorporate flexibility if we were to adopt a process such as the TLBC certification process in connection with any Tribal consent demonstration requirement it may adopt. Finally, the Commission seeks comment on whether it should consider requiring something less than Tribal consent of winning bidders (e.g., a different type of engagement than the current requirement in § 54.313(a)(5)).

23. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and costs and benefits analyses filed in response to the *Second FNPRM*. The Commission's evaluation of this information will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

24. There are no federal rules that duplicate, overlap, or conflict with the rules proposed herein.

25. *Ex Parte Presentations—Permit-But-Disclose*. The proceeding this document initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte*

presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Ordering Clauses

26. *It is ordered* that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), 403, and §§ 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1, 1.421, this *Second FNPRM* is adopted.

27. *It is further ordered* that the Commission's Office of the Secretary, shall send a copy of this *Second FNPRM*, including the Supplemental Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–20979 Filed 9–16–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CB Docket No. 24–245; DA 24–782; FR ID 241932]

Possible Revision or Elimination of Rules

AGENCY: Federal Communications Commission.

ACTION: Regulatory review; comments requested.

SUMMARY: In this document, the Federal Communication Commission (FCC or Commission) invites the general public to comment on the Commission's rules to be reviewed pursuant to the Regulatory Flexibility Act of 1980. The purpose of the review is to determine whether Commission rules that the FCC adopted in calendar year 2013 should be continued without change, amended, or rescinded in order to minimize any significant impact the rule(s) may have on a substantial number of small entities. Upon receiving comments from the public, the Commission will evaluate those comments and consider whether action should be taken to rescind or amend the relevant rule(s), or retain the rule(s) without modification.

DATES: Comments may be filed on or before November 18, 2024.

ADDRESSES: You may submit comments, identified by CB Docket No. 24–245 by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.

- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail

Express must be sent to 45 L Street NE, Washington, DC 20554.

- *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

FOR FURTHER INFORMATION CONTACT:

Sharon Stewart, Women's Outreach Specialist, Office of Communications Business Opportunities, (202) 418-0994, Sharon.Stewart@fcc.gov or OCBOInfo@fcc.gov or visit www.fcc.gov/ocbo.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice document in CB Docket No. 24-245, DA 24-782, released on August 9, 2024. The full version of this document can be located at <https://docs.fcc.gov/public/attachments/DA-24-782A1.pdf>.

Annually, the Commission will publish a list of 10-year old rules for review and comment by interested parties pursuant to section 610 of the RFA.

Synopsis

By the Public Notice document, the Office of Communications Business Opportunities announces the Federal Communications Commission's (Commission) plan to review rules the agency adopted in calendar year 2013 that have or will have a significant economic impact on a substantial number of small entities. Section 610 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 610, requires the Commission to determine whether such rules should be continued without change, amended, or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities. The Appendix of the Public Notice document lists the rules the Commission will review during the next 12 months. Annually, the Commission will publish a list for the review of rules promulgated 10 years preceding the year of review.

The Commission will consider the following factors in reviewing each rule in a manner consistent with section 610(b) of the RFA:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments from the public concerning the rule;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates, or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- (e) The length of time since the rule has been evaluated or the degree to

which technology, economic conditions, or other factors have changed in the area affected by the rule.

The Appendix of the Public Notice document includes a brief description, the need for and legal basis of each rule. The Commission invites the general public to comment on these rules in accordance with the instructions below. The Commission will consider all relevant and timely filed comments before it takes final action in this proceeding.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

The proceeding this document initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte*

presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Sanford Williams,

Deputy Managing Director, Office of Managing Director.

The Federal Communications Commission (Commission) will review the rules below pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 610, for the period beginning January 2013 and ending December 2013. All of the rules listed below are in Title 47 of the Code of Federal Regulations.

PART 1—PRACTICE AND PROCEDURE

Subpart A—General Rules of Practice and Procedure

Brief Description: Section 1.77 explains that the application procedures set forth in part 1 are general in nature and provides cross-references to detailed application procedures that are applicable to specific services and authorization processes.

Need: This rule is informational and is needed to help the public understand where to find the Commission's detailed application procedures under its various rule parts.

Legal Basis: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461.

Section Number and Title:

1.77 Detailed application procedures; cross references.

Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers

Brief Description: Section 1.767 of the Commission's rules sets forth the application filing requirements for submarine cable landing licenses. During the relevant reporting period, the Commission modified certain reporting requirements applicable to licensees affiliated with a carrier with market power in a cable's World Trade Organization (WTO) Member destination market. In particular, the Commission amended section 1.767(l)(2) to retain the requirement that cable landing licensees that are affiliated with a carrier with market power in a WTO Member destination country report their circuits on those routes.

¹ 47 CFR 1.1200 *et seq.*

Need: This change is part of the Commission's efforts to ensure that the Commission's data collections match its data needs, but avoid unnecessary or excessive burdens on telecommunications providers.

Legal Basis: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, Cable Landing License Act of 1921, 47 U.S.C. 35–39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96.

Section Number and Title:

1.767 (1)(2) Cable landing licenses.

Subpart F—Wireless Radio Services Applications and Proceedings

Brief Description: Recognizing the need to review its foreign ownership policies and procedures and reduce delay, uncertainty, and expense to facilitate further investment in wireless networks, the Commission adopted rules that modified the policies and procedures that apply to foreign ownership of common carrier radio station licensees—*i.e.*, companies that provide fixed or mobile telecommunications service over networks that employ spectrum-based technologies, either in whole or in part—pursuant to sections 310(b)(3) and 310(b)(4) of the Communications Act of 1934, as amended (the “Act”). These new measures also apply to foreign ownership of aeronautical en route and aeronautical fixed radio station licensees pursuant to section 310(b)(4) of the Act.

Need: The Commission adopted these rules to reduce the regulatory costs and burdens imposed on common carrier and aeronautical radio station applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission's foreign ownership filing requirements and review process; and facilitate investment from new sources of capital at a time of growing need for capital investment in this sector of the Nation's economy, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, and 310.

Section Number and Title:

1.907 Definitions.

Brief Description: Section 1.1913 describes the application procedures that apply to applicants, licensees, and lessees in the wireless radio services.

Need: This rule furthers the Commission's fundamental statutory responsibility to assign licenses for use

of the radio spectrum by describing application requirements and procedures in the wireless radio services.

Legal Basis: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461.

Section Number and Title:

1.913 Application and notification forms; electronic filing.

Brief Description: Recognizing the need to review its foreign ownership policies and procedures and reduce delay, uncertainty, and expense to facilitate further investment in wireless networks, the Commission adopted rules that modified the policies and procedures that apply to foreign ownership of common carrier radio station licensees—*i.e.*, companies that provide fixed or mobile telecommunications service over networks that employ spectrum-based technologies, either in whole or in part—pursuant to sections 310(b)(3) and 310(b)(4) of the Communications Act of 1934, as amended (the “Act”). These new measures also apply to foreign ownership of aeronautical en route and aeronautical fixed radio station licensees pursuant to section 310(b)(4) of the Act.

Need: The Commission adopted these rules to reduce the regulatory costs and burdens imposed on common carrier and aeronautical radio station applicants, licensees, and spectrum lessees; provide greater transparency and more predictability with respect to the Commission's foreign ownership filing requirements and review process; and facilitate investment from new sources of capital at a time of growing need for capital investment in this sector of the Nation's economy, while continuing to protect important interests related to national security, law enforcement, foreign policy, and trade policy.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, and 310.

Section Number and Title:

1.990 [added] Citizenship and filing requirements under section 310(b) of the Communications Act of 1934, as amended.

1.991 [added] Contents of petitions for declaratory ruling under section 310(b) of the Communications Act of 1934, as amended.

1.992 [added] How to calculate indirect equity and voting interests under section 1.991.

1.993 [added] Insulation criteria for interests in limited partnerships, limited liability partnerships, and limited liability companies.

1.994 [added] Routine terms and conditions.

Subpart I—Procedures Implementing the National Environmental Policy Act of 1969

Brief Description: Section 1.1307 describe the actions that may have a significant impact on the environment and for which environmental assessments must be prepared. Section 1.1310 set for the FCC's radiofrequency radiation exposure limits.

Need: These rules allow the Commission to meet its requirements under the National Environmental Policy Act of 1969.

Legal Basis: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461.

Section Number and Title:

1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

1.1310 Radiofrequency radiation exposure limits.

Subpart V—Commission Collection of Advanced Telecommunications Capability Data and Local Exchange Competition Data

Brief Description: These rules modify the entities required to submit Form 477 and the submission frequency and stipulate how disclosure of data in Form 477 will be treated.

Need: These rules are needed to reduce reporting burdens and increase the usefulness of data collected through Form 477, which informs the Commission's efforts to encourage broadband deployment on a reasonable and timely basis to all Americans.

Legal Basis: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, Cable Landing License Act of 1921, 47 U.S.C. 35–39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96.

Section Number and Title:

1.7001(a)(2) Facilities-based providers.

1.7001(b), (c), and (d) Scope and content of filed reports.

Brief Description: The rule modifications add the collection of broadband deployment data to the Commission's Form 477 collection. Other modifications streamline and reduce the burdens on providers while making other modest improvements.

Need: Data about broadband and voice deployment and subscription are essential to the Commission's ability to fulfill its statutory obligations and play a vital public interest role for other state, local, and federal agencies, researchers, and consumers.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

Section Number and Title:
1.7002 Frequency of reports.

Subpart X—Spectrum Leasing

Brief Description: The purpose of this subpart is to implement policies and rules pertaining to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees. This subpart also implements policies for private commons arrangements.

Need: These rules serve an ongoing need with respect to defining which services are included in the Commission's spectrum leasing policies, outlined in this section.

Legal Basis: 47 U.S.C. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

Section Number and Title:
1.9005 Included services.

Subpart BB—Disturbance of AM Broadcast Station Antenna Patterns

Brief Description: This rule part protects the operations of AM broadcast stations from nearby tower construction that may distort the AM antenna patterns. All parties holding or applying for Commission authorizations that propose to construct or make a significant modification to an antenna tower or support structure in the immediate vicinity of an AM antenna, or propose to install an antenna on an AM tower, are responsible for completing the analysis and notice process described in this subpart, and for taking any measures necessary to correct disturbances of the AM radiation pattern, if such disturbances occur as a result of the tower construction or modification or as a result of the installation of an antenna on an AM tower. (An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, Third Report and Order and Second Order on Reconsideration, FCC 13–115).

Need: These rules establish a single protection scheme for tower construction and modification near AM tower arrays, and provide the option to use a computer modeling methodology that is reflective of current industry practice in lieu of time-consuming direct measurement procedures.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

Section Number and Title:

1.30000 Purpose.

1.30001 Definitions.

1.30002 Tower construction or modification near AM stations.

1.30003 Installations on an AM antenna.

1.30004 Notice of tower construction or modification near AM stations.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Subpart B—Allocation, Assignment, and Use of Radio Frequencies

Brief Description: These rules determine when federal stations may be authorized to use frequencies in certain bands.

Need: The rules ensure efficient and effective use of spectrum.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted; Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

Section Number and Title:

2.103 Federal use of non-Federal frequencies.

Brief Description: Section 2.106 contains the Table of Frequency Allocations, which specifies the Federal and non-Federal radio services that may operate in certain frequency bands, as well as the operating conditions for each service, including power limits and coordination procedures.

Need: The Table of Frequency Allocations is needed to allow Federal and non-Federal services to operate safely and without causing harmful interference. The Table is amended frequently to revise existing allocations and add new allocations, generally promoting more efficient and productive use of radio spectrum.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.106 Table of Frequency Allocations.

Subpart I—Marketing of Radio-Frequency Devices

Brief Description: Sections 2.803 and 2.805 specify the how radio frequency devices may be marketed and operated prior to equipment authorization, respectively.

Need: These rules ensure that only radiofrequency devices that have been authorized through the Commission's equipment authorization program are marketed and operated, unless specified exceptions apply. The rules are critical to the effective management of the radiofrequency spectrum and help ensure that devices that could cause harmful interference to authorized users are not marketed or operated.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.803 Marketing of radio frequency devices prior to equipment authorization.

2.805 Operation of radio frequency devices prior to equipment authorization.

Subpart J—Equipment Authorization Procedures

Brief Description: Section 2.1033 specifies what information must be included on an application when seeking certification of radiofrequency devices.

Need: These rules ensure that only radiofrequency devices that have been authorized through the Commission's equipment authorization program are marketed and operated, unless specified exceptions apply. The rules are critical to the effective management of the radiofrequency spectrum and help ensure that devices have proper technical documentation to support authorization of the equipment.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.1033(b)(11) Application for certification.

Brief Description: Section 2.1091 specifies which mobile devices must undergo radiofrequency (RF) radiation exposure evaluation.

Need: These rules are needed to satisfy the Commission's responsibilities under the National Environmental Policy Act to evaluate the environmental significance of its actions and to minimize the chance of harmful interference.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

Subpart K—Importation of Devices Capable of Causing Harmful Interference

Brief Description: Section 2.1204 specifies the conditions under which RF devices may be imported into the United States.

Need: This rule are needed to prevent unauthorized and non-complaint RF devices from being imported into the United States and causing harmful interference.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.1204 Import conditions.

PART 4—DISRUPTIONS TO COMMUNICATIONS

Brief Description: These rules require that 911 service providers take

reasonable measures to provide reliable 911 service, as evidenced by an annual certification. Providers can comply with this requirement by either implementing certain industry-backed “best practices”, or by implementing alternative measures that are reasonably sufficient to ensure reliable 911 service. 911 service providers certify to 911 circuit auditing, backup power, and network monitoring.

Need: These rules require 911 service providers to certify to best practices related to 911 circuit auditing, backup power, and network monitoring to reduce vulnerabilities in 911 network architecture, maintenance, and operation.

Legal Basis: 47 U.S.C. 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a-1, and 615c.

Section Number and Title:

4.9 Outage reporting requirements—threshold criteria.

PART 5—EXPERIMENTAL RADIO SERVICE

Subpart A—General

Brief Description: The rules in this part provide the conditions by which portions of the radio frequency spectrum may be used for the purposes of experimentation, product development, and market trials.

Need: These rules implement the Commission’s statutory requirement to provide for experimental use of radio frequencies.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 336.

Section Number and Title:

- 5.1 Basis and purpose.
- 5.3 Scope of service.
- 5.5 Definition of terms.

Subpart B—Applications and Licenses

- 5.51 Eligibility.
- 5.53 Station authorization required.
- 5.54 Types of authorizations available.
- 5.55 Filing of applications.
- 5.57 Who may sign applications.
- 5.59 Forms to be used.
- 5.61 Procedure for obtaining a special temporary authorization.
- 5.63 Supplemental statements required.
- 5.64 Special provisions for satellite systems.
- 5.65 Defective applications.
- 5.67 Amendment or dismissal of applications.
- 5.69 License grants that differ from applications.
- 5.71 License period.
- 5.73 Experimental report.

- 5.77 Change in equipment and emission characteristics.
- 5.79 Transfer and assignment of station authorization for conventional, program, medical testing, Spectrum Horizons, and compliance testing experimental radio licenses.
- 5.81 Discontinuance of station operation.
- 5.83 Cancellation provisions.
- 5.84 Non-interference criterion.
- 5.85 Frequencies and policy governing frequency assignment.
- 5.91 Notification to the National Radio Astronomy Observatory.
- 5.95 Informal objections.

Subpart C—Technical Standards and Operating Requirements

- 5.101 Frequency stability.
- 5.103 Types of emission.
- 5.105 Authorized bandwidth.
- 5.107 Transmitter control requirements.
- 5.109 Responsibility for antenna structure painting and lighting.
- 5.110 Power limitations.
- 5.111 Limitations on use.
- 5.115 Station identification.
- 5.121 Station record requirements.
- 5.123 Inspection of stations.
- 5.125 Authorized points of communication.

Subpart D—Broadcast Experimental Licenses

- 5.201 Applicable rules.
- 5.203 Experimental authorizations for licensed broadcast stations.
- 5.205 Licensing requirements, necessary showing.
- 5.207 Supplemental reports with application for renewal of license.
- 5.211 Frequency monitors and measurements.
- 5.213 Time of operation.
- 5.215 Program service and charges.
- 5.217 Rebroadcasts.
- 5.219 Broadcasting emergency information.

Subpart E—Program Experimental Radio Licenses

- 5.301 Applicable rules.
- 5.302 Eligibility.
- 5.303 Frequencies.
- 5.304 Area of operations.
- 5.305 Program license not permitted.
- 5.307 Responsible party.
- 5.308 Stop buzzer.
- 5.309 Notification requirements.
- 5.311 Additional requirements related to safety of the public.
- 5.313 Innovation zones.

Subpart F—Medical Testing Experimental Radio Licenses

- 5.401 Applicable rules.

- 5.402 Eligibility and usage.
- 5.403 Frequencies.
- 5.404 Area of operation.
- 5.405 Yearly report.
- 5.406 Responsible party, “stop-buzzer,” and notification requirements, and additional requirements related to safety of the public.
- 5.407 Exemption from station identification requirement.

Subpart G—Compliance Testing Experimental Radio Licenses

- 5.501 Applicable rules.
- 5.502 Eligibility.
- 5.503 Scope of testing activities.
- 5.504 Responsible party.
- 5.505 Exemption from station identification requirement.

Subpart H—Product Development and Market Trials

- 5.601 Product development trials.
- 5.602 Market trials.

PART 13—COMMERCIAL RADIO OPERATORS

Brief Description: The part 13 rules prescribe the manner and conditions under which commercial radio operators are licensed by the Commission. Section 13.7 sets forth the classifications of operator licenses and endorsements. Section 13.8 describes the authority conveyed by the licenses, certificates, and permits issued under this part. Finally, section 13.9 provides the eligibility requirements and applications for a license or endorsement.

Need: The revised rules provide classification of operator licenses and endorsements (§ 13.7(b)(4)); authority conveyed by licenses, certificates, and permits issued under part 13 (§ 13.8(g)); and eligibility and application for new license or endorsement (§ 13.9(d)(3)). The need for these rules is ongoing.

Legal Basis: 47 U.S.C. 154 and 303.

Section Number and Title:

- 13.7(b)(4) Classification of operator licenses and endorsements.
- 13.8(g) Authority conveyed.
- 13.9(d)(3) Eligibility and application for new license or endorsement.

PART 14—ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

Subpart E—Internet Browsers Built Into Telephones Used With Public Mobile Services

Brief Description: These rules require that if a manufacturer of a telephone used with public mobile services

includes an internet browser in such telephone, or if a provider of mobile service arranges for the inclusion of a browser in telephones to sell to customers, the manufacturer or provider shall ensure that the functions of the included browser (including the ability to launch the browser) are accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. 47 U.S.C. 619.

Need: These rules are needed to ensure that blind and low vision consumers can access internet browsers built into telephones used with public mobile services and the internet content using such internet browsers.

Legal Basis: 47 U.S.C. 151, 154(i), 154(j), 255, 303, 403, 503, 617, 618, 619.

Section Number and Title:

14.60 Applicability.

14.61 Obligations with Respect to internet Browsers Built into Mobile Phones.

PART 15—RADIO FREQUENCY DEVICES

Subpart A—General

Brief Description: Section 15.3 contains the definitions of terms associated with radiofrequency devices operating under part 15 rules.

Need: This rule contains the definitions of terms associated with the intentional, unintentional, or incidental radiator equipment that may be operated without an individual license, which ensures devices comport with the FCC's equipment authorization rules. The rules are critical to the effective management of the radiofrequency spectrum and help ensure that devices that operate without an individual license and could cause harmful interference to licensed and authorized radiofrequency users are not marketed.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

Section Number and Title:

15.3 Definitions.

Brief Description: Section 15.37 sets dates for when certain devices will no longer receive authorization for use in specific radiofrequency bands and for some devices what rule sections apply following that date.

Need: This rule establishes timelines for when equipment authorization for the use of specified devices in specific spectrum bands will no longer be permitted or after a date when certain devices must be authorized pursuant to another part 15 rule. The rule allows both consumers and equipment manufacturers to understand when devices are no longer eligible to receive authorization.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, and 544A.

Section Number and Title:

15.37 Transition provisions for compliance with this part.

Subpart C—Intentional Radiators

Brief Description: Section 15.204 requires that an intentional radiator only be operated with the antenna with which it was authorized.

Need: By stipulating that part 15 intentional radiators can only operate with an authorized antenna, this rule allows the Commission to ensure that part 15 intentional radiator devices operate within the required power levels. This allows the Commission to ensure that radiofrequency devices used without an individual license comply with the equipment authorization rules, which in turn ensures that such devices do not cause harmful interference.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, and 544A.

Section Number and Title:

15.204 External radio frequency power amplifiers and antenna modifications.

Brief Description: Section 15.237 establishes the power and operating requirements for auditory assistance devices operating in the frequency bands 72.0–73.0 MHz, 74.6–74.8 MHz and 75.2–76.0 MHz.

Need: This rule establishes the operating requirements for auditory assistance devices, such as hearing aids, that operate in the spectrum bands 72.0–73.0 MHz, 74.6–74.8 MHz and 75.2–76.0 MHz. Auditory assistance devices are intentional radiators and imposing technical operating requirements ensures they meet the equipment authorization process and be certified for marketing.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544A.

Section Number and Title:

15.237 Operation in the bands 72.0–73.0 MHz, 74.6–74.8 MHz and 75.2–76.0 MHz.

Brief Description: Section 15.255 establishes the technical parameters for devices operating in the 57–64 GHz band.

Need: This rule sets the operating requirements for intentional radiators in the 57–64 GHz range (subsequently expanded to 71 GHz). Setting power and emission limits for devices operating in this band help to ensure such devices meet the FCC's equipment authorization regime and will not cause harmful interference.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

15.255 Operation within the band 57–64 GHz. (title has subsequently been changed to Operation within the band 54–71 GHz.).

SUBCHAPTER B—COMMON CARRIER SERVICES

PART 20—COMMERCIAL MOBILE SERVICES

Brief Description: Part 20 rules set forth the Commission's requirements and conditions for commercial mobile radio service providers under the Communications Act of 1934, as amended. Section 20.2 lists other rule parts applicable to commercial mobile radio service providers. Section 20.2(c) adds part 9 of the Commission's rules, which contains 911 and E911 requirements applicable to commercial mobile radio service providers, to the list of the rule parts applicable to commercial mobile radio service providers. Section 20.21 sets forth rules providing for broader availability of signal boosters, while setting technical, operational, and registration requirements for such boosters.

Need: Section 20.2 is needed on an ongoing basis to provide notice to commercial mobile radio service providers of their obligations under applicable 911 and E911 requirements. Section 20.21 is needed on an ongoing basis to continue to provide for the use of signal boosters to enhance wireless coverage for consumers, as well as to ensure that the broad availability of these devices does not adversely affect wireless networks.

Legal Basis: 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615(a), 615(b), 615(c), unless otherwise noted.

Section Number and Title:

20.2 Other applicable rule parts.

20.21 Signal boosters.

PART 22—PUBLIC MOBILE SERVICES

Subpart A—Scope and Authority

Brief Description: The part 22 rules establish the requirements and conditions under which radio stations may be licensed and used in the Public Mobile Services. Subpart A provides the scope and authority, and section 22.9 permits operation of certificated Consumer Signal Boosters on frequencies regulated for Public Mobile Services.

Need: Section 22.9 was added to the Commission's rules to permit operation of Consumer Signal Boosters under applicable part 22 rules for Public

Mobile Services, and it is needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154, 222, 303, 309, and 332.

Section Number and Title:

22.9 Operation of certificated signal boosters.

Subpart C—Operational and Technical Requirements

Brief Description: Section 22.377 states that transmitters used under this rule part must be certified under the Commission's part 2 equipment authorization rules.

Need: This rule allows the Commission to ensure that radiofrequency devices used in the Public Mobile Services comply with the equipment authorization rules, which in turn ensure that the FCC carries out its responsibilities under the Communications Act and the various treaties and international regulations.

Legal Basis: 47 U.S.C. 154, 222, 303, 309, and 332.

Section Number and Title:

22.377 Certification of transmitters.

Subpart E—Paging and Radiotelephone Service

Brief Description: Section 22.591 lists the channels that are allocated for assignment to fixed transmitters that support other transmitters that provide public mobile service.

Need: This rule furthers the statutory requirement that the Commission assign bands of frequencies to the various classes of stations and provides a channel plan that promotes the effective and efficient use of point-to-point operations in the public mobile paging and radiotelephone stations.

Legal Basis: 47 U.S.C. 154, 222, 303, 309, and 332.

Section Number and Title:

22.591 Channels for point-to-point operation.

PART 24—PERSONAL COMMUNICATIONS SERVICES

Subpart A—General Information

Brief Description: The part 24 rules state the conditions under which portions of the radio spectrum are made available and licensed for personal communications services. Subpart A provides general information, and section 24.9 permits operation of certificated Consumer Signal Boosters on frequencies regulated under this part.

Need: Section 24.9 was added to the Commission's rules to permit operation of Consumer Signal Boosters under applicable part 24 rules for personal

communications services, and it is needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 309, and 332.

Section Number and Title:

24.9 Operation of certificated signal boosters.

PART 25—SATELLITE COMMUNICATIONS

Subpart C—Technical Standards

Brief Description: Part 25 contains service and licensing rules for Satellite Communications. Subpart C sets forth technical standards applicable to operations by satellite operators. Section 25.263 provides information sharing requirements for Satellite Digital Audio Radio Authorization (SDARS) terrestrial repeater operators. Section 25.265 requires Mobile Satellite Service licenses operating in the 2000–2020 MHz band to accept interference from lawful operations in the 1995–2000 MHz band (AWS–H Block).

Need: Sections 25.263(b)(3)–(6) were added to the Commission's rules to incorporate proposed language from AT&T/Sirius XM encouraging the adoption of coordination agreements by Wireless Communications Services (WCS) and SDARS as well as a provision ensuring that WCS and SDARS are able to enter into agreements regarding the logistics of information exchanges. Section 25.265 provides for continued operations of Mobile Satellite Service licenses in the 2000–2020 MHz band and AWS–H Block operations in the 1995–2000 MHz band in the public interest. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

Section Number and Title:

25.263(b)(3)–(6) Information sharing requirements for SDARS terrestrial repeater operators.

25.265 Acceptance of interference in 2000–2020 MHz.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

Subpart A—General Information

Brief Description: The part 27 rules state the conditions under which spectrum is made available and licensed for the provision of Miscellaneous Wireless Communications Services (WCS) in twenty-six distinct bands. Subpart A sets forth general information. Sections 27.1(b)(7) and (b)(10) specify that the Part 27 rules apply to Advanced Wireless Services H

Block (AWS–H) frequencies in 1915–1920 MHz and 1995–2000 MHz and Advanced Wireless Services 4 (AWS–4) frequencies in 2000–2020 MHz and 2180–2200 MHz. Section 27.2 provides for permissible communications under this part at specified frequencies. Section 27.5(j) and (k) provide for the licensing of frequencies in the 2000–2020 MHz and 2180–2200 MHz (AWS–4) and 1915–1920 MHz and 1995–2000 (AWS–H) bands, while sections 27.6(i) and (j) provide for the applicable service areas in these bands. Section 27.9 permits operation of certificated Consumer Signal Boosters on frequencies regulated under this part.

Need: Section 27.1(b)(7) and (b)(10) were added to provide for the applicability of Part 27 rules to AWS frequencies. Section 27.2(d) was added to ensure that AWS–4 operators in the 2000–2020 MHz and 2180–2200 MHz do not provide mobile-satellite service under the provisions of this part. Section 27.2(e) was added to ensure only downlink transmissions occur on the 716–722 MHz and 722–728 MHz bands. Sections 27.5(j) and (k) and sections 27.6(i) and (j) were added to provide for licensing of and service in the AWS–4 and AWS–H bands in the public interest. Section 27.9 was added to permit operation of Consumer Signal Boosters under wireless communications services in the applicable bands. These rules all continue to be needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.1(b)(7), (b)(10) Basis and purpose. 27.2(d), (e) Permissible communications.

27.5(j), (k) Frequencies.

27.6 Service areas.

27.6(i), (j) Service areas.

27.9 Operation of certified signal boosters.

Subpart B—Applications and Licenses

Brief Description: These rules state, in part, the conditions under which spectrum is made available and licensed for the provision of wireless communications services in the following bands. Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart B establishes application and licensing requirements applicable to a number of spectrum bands, including, among others, Advanced Wireless Services H Block (AWS–H) (1915–1920 MHz and 1995–2000 MHz) and Advanced

Wireless Services 4 (AWS-4) (2000–2020 MHz and 2180–2200 MHz). The revised rules specify license periods for AWS-H and AWS-4 (sections 27.13(i) and (j)) and construction requirements for AWS-H and AWS-4 (sections 27.14(q) and (r)).

Need: The need for these rules is ongoing to ensure that AWS licenses continue to operate in the public interest.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.11 Initial authorization.

27.13 License period.

27.13(i) License period.

27.13(j) License period.

27.14 Construction requirements.

27.14(q) Construction requirements.

27.14(r) Construction requirements.

27.15 Geographic partitioning and spectrum disaggregation.

Subpart C—Technical Standards

Brief Description: The part 27 rules state the conditions under which spectrum is made available and licensed for the provisions of wireless communications services in twenty-six distinct bands. Subpart C sets forth technical standards. The section 27.50 rules add power limits and emission limits for particular types of services that may be offered as 600 MHz, Advanced Wireless Services H Block (AWS-H), and Advanced Wireless Services 4 (AWS-4). Section 27.53 provides for emission limits in particular bands. Section 27.64 protects against interference from wireless communications service stations. Section 27.65 provides for the acceptance of interference by AWS-4 licensees from lawful operations in the 1995–2000 MHz band.

Need: Section 27.50 is needed on an ongoing basis to ensure that appropriate power limits, emission limits, and other technical requirements are in place such that AWS licenses continue to operate in the public interest. Section 27.53(h)(2)(iii) and (h)(2)(iv) are needed on an ongoing basis to set forth AWS emission limits for operations in the 1915–1920 MHz and 1995–2000 MHz bands. Section 27.64(d) is needed on an ongoing basis to define harmful interference to SDARS operations that require resolution. Section 27.65 is needed to ensure that receivers operating in the 2000–2020 MHz band (AWS-4) and lawful operations in the 1995–2000 MHz band continue to operate in the public interest.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.50 Power limits and duty cycle.

27.50(c)(12), (c)(13) Power limits and duty cycle.

27.50(d)(7)–(10) Power limits and duty cycle.

27.53 Emission limits.

Brief Description: The part 27 rules state the conditions under which spectrum is made available and licensed for the provisions of wireless communications services in twenty-six distinct bands. Subpart C sets forth technical standards. The section 27.50 rules add power limits and emission limits for particular types of services that may be offered as 600 MHz, Advanced Wireless Services H Block (AWS-H), and Advanced Wireless Services 4 (AWS-4). Section 27.53 provides for emission limits in particular bands. Section 27.64 protects against interference from wireless communications service stations. Section 27.65 provides for the acceptance of interference by AWS-4 licensees from lawful operations in the 1995–2000 MHz band.

Need: Section 27.50 is needed on an ongoing basis to ensure that appropriate power limits, emission limits, and other technical requirements are in place such that AWS licenses continue to operate in the public interest. Section 27.53(h)(2)(iii) and (h)(2)(iv) are needed on an ongoing basis to set forth AWS emission limits for operations in the 1915–1920 MHz and 1995–2000 MHz bands. Section 27.64(d) is needed on an ongoing basis to define harmful interference to SDARS operations that require resolution. Section 27.65 is needed to ensure that receivers operating in the 2000–2020 MHz band (AWS-4) and lawful operations in the 1995–2000 MHz band continue to operate the public interest.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.53(h)(2)(iii), (iv) Emission limits.

Brief Description: The part 27 rules state the conditions under which spectrum is made available and licensed for the provisions of wireless communications services in twenty-six distinct bands. Subpart C sets forth technical standards. The section 27.50 rules add power limits and emission limits for particular types of services that may be offered as 600 MHz, Advanced Wireless Services H Block (AWS-H), and Advanced Wireless Services 4 (AWS-4). Section 27.53 provides for emission limits in particular bands. Section 27.64 protects against interference from wireless communications service stations.

Section 27.65 provides for the acceptance of interference by AWS-4 licensees from lawful operations in the 1995–2000 MHz band.

Need: These rules are needed on an ongoing basis to ensure that appropriate power limits, emission limits, and other technical requirements are in place such that AWS licenses continue to operate in the public interest. Section 27.64(d) is needed on an ongoing basis to define harmful interference to SDARS operations that require resolution. Section 27.65 is needed to ensure that receivers operating in the 2000–2020 MHz band (AWS-4) and lawful operations in the 1995–2000 MHz band continue to operate the public interest.

Section Number and Title:

27.55 Power strength limits.

27.57 International coordination.

27.60 TV/DTV interference protection criteria.

27.64 Protection from interference.

27.65 Acceptance of interference in 2000–2020 MHz.

27.70 Information exchange.

Subpart E—Application, Licensing, and Processing Rules for WCS

Brief Description: Commercial Mobile Radio Service operators are required to submit a description of their proposed facility to a Commission-approved public safety coordinator.

Need: These rules continue to be needed to facilitate communication among licensees and public safety coordinators.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.303 Upper 700 MHz commercial and public safety coordination zone.

Subpart F—Competitive Bidding, Procedures for the 698–806 MHz Band

Brief Description: These rules describe the conditions under which spectrum is made available and licensed for the provision of wireless communications services in certain bands.

Need: This rule serves an ongoing need to notify the public how the Commission will resolve mutually exclusive bids for these frequencies.

Legal Basis: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Section Number and Title:

27.501 746–758 MHz, 775–788 MHz, and 805–806 MHz bands subject to competitive bidding.

Subpart K—1915–1920 MHz and 1995–2000 MHz

Brief Description: Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart K contains rules that are applicable to Advanced Wireless Service H Block (AWS-H) stations operating in the 1915–1920 MHz and 1995–2000 MHz frequencies. The Subpart K rules (sections 27.1001, 27.1002, 27.1021, 27.1031, and 27.1041) establish that licenses in these bands will be subject to competitive bidding and define designated entities in the bands for purposes of competitive bidding. In addition, these rules set reimbursement obligations for the new licenses with respect to relocation of incumbent licenses from these bands.

Need: The need for these rules is ongoing to ensure that stations within the Advanced Wireless Service H Block continue to operate in the public interest.

Legal Basis: 47 U.S.C. 151, 152, 154(i), 301, 302, 303, 307, 309, 332, 336, 337, 1403, 1404 and 1451.

Section Number and Title:

27.1001 1915–1920 MHz and 1995–2000 MHz bands subject to competitive bidding.

27.1002 Designated entities in the 1915–1920 MHz and 1995–2000 MHz bands.

27.1021 Reimbursement obligation of licensees at 1915–1920 MHz.

27.1031 Reimbursement obligation of licensees at 1995–2000 MHz.

27.1041 Termination of cost-sharing obligations.

Subpart L—1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 2110–2155 MHz, 2155–2180 MHz, 2180–2200 MHz Bands

Brief Description: Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart L contains rules that are applicable to Advanced Wireless Services, including Advanced Wireless Services 4 (AWS-4) stations operating in the 2000–2020/2180–2200 MHz bands. Sections 27.1103 and 27.1104 establish rules applicable to competitive bidding for AWS-4 licenses and define designated entities in the bands for purposes of competitive bidding. Sections 27.1134(e) and 27.1136 require that AWS-4 licensees protect Federal Government Operations and mobile satellite services, respectively.

Need: The need for these rules is ongoing to ensure that AWS-4 stations continue to operate in the public interest.

Legal Basis: 47 U.S.C. 151, 152, 154(i), 301, 302, 303, 307, 309, 332, 336, 337, 1403, 1404 and 1451.

Section Number and Title:

27.1103 2000–2020 MHz and 2180–2200 MHz bands subject to competitive bidding.

27.1104 Designated Entities in the 2000–2020 MHz and 2180–2200 MHz bands.

27.1134(e) Protection of Federal Government Operations.

27.1136 Protection of mobile satellite services in the 2000–2020 MHz and 2180–2200 MHz bands.

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES AND CERTAIN AFFILIATES

Brief Description: These rules modify the entities required to submit Form 477 and the submission frequency and stipulate how disclosure of data in Form 477 will be treated.

Need: These rules are needed to reduce reporting burdens and increase the usefulness of data collected through Form 477, which informs the Commission's efforts to encourage broadband deployment on a reasonable and timely basis to all Americans.

Legal Basis: 47 U.S.C. 35–39, 154, 211, 219, 220; Pub. L. 104–104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted.

Section Number and Title:

43.01(a), (b) Applicability.

Brief Description: Part 43 sets forth reporting requirements for common carriers. During the relevant reporting period, the Commission revised the requirements for providers of international telecommunications to report annual traffic and revenue and circuit information. Among other things, the Commission removed reporting requirements from over a thousand small carriers and greatly simplified the reporting requirements for larger carriers. Additionally, during the same reporting period, the Commission further modernized and streamlined its international telephony rules in an effort to lower costs and increase competition among U.S. carriers by eliminating the International Settlements Policy (ISP) and applying a modified version to Cuba.

Need: In further streamlining and modernizing its reporting requirements, the Commission ensured that it obtains information that is more relevant to the current state of the international telecommunications markets and its data collections match its data needs

while avoiding unnecessary or excessive burdens on entities subject to Commission authority. With regard to modifying the ISP, the Commission's actions, among other things, enhanced its ability to respond to foreign carriers' anticompetitive behavior in a timely and effective manner and provided U.S. carriers greater flexibility to negotiate lower settlement rates on those routes that are no longer subject to the ISP.

Legal Basis: 47 U.S.C. 154; Telecommunications Act of 1996; Pub. Law 104–104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220, as amended; Cable Landing License Act of 1921, 47 U.S.C. 35–39.

Section Number and Title:

43.62 [added] Reporting requirements for holders of international Section 214 authorizations and providers of international services.

PART 54—UNIVERSAL SERVICE**Subpart D—Universal Service Support for High Cost Areas**

Brief Description: Section 54.312(b) prospectively revises rules for the first round of Connect America Fund Phase I incremental funding. Section 54.312(c) implements the second round of Connect America Fund Phase I incremental funding, including acceptance requirements and support amounts. Section 54.313 stipulates reporting requirements for recipients of high cost universal service funding and revises financial reporting obligations for privately held rate-of-return carriers.

Need: These rules are needed for implementation of the second round of Connect America Fund Phase I incremental funding and to increase transparency, monitoring, and oversight over Phase I recipients while reducing reporting burdens for certain carriers.

Legal Basis: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302.

Section Number and Title:

54.312(b), (b)(3) Incremental Support in 2012.

54.312(c), (c)(4) Incremental Support in 2013.

54.313(b), (f)(2) Annual reporting requirements for high-cost recipients.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

Brief Description: Part 63 sets forth, among other things, the processes,

requirements, and conditions applicable to international section 214 applications and authorizations to provide global facilities-based and global resale services. During the relevant reporting period, the Commission revised the requirements for providers of international telecommunications to report annual traffic and revenue and circuit information. Among other things, the Commission removed reporting requirements from over a thousand small carriers and greatly simplified the reporting requirements for larger carriers. Additionally, during the same reporting period, the Commission further modernized and streamlined its international telephony rules in an effort to lower costs and increase competition among U.S. carriers by eliminating the International Settlements Policy (ISP) and applying a modified version to Cuba.

Need: These rules provide the applicable framework and establish the general applications, procedures, conditions, and restrictions for the provision of U.S.-international telecommunications services. In further streamlining and modernizing its reporting requirements, the Commission ensured that it obtains information that is more relevant to the current state of the international telecommunications markets and its data collections match its data needs while avoiding unnecessary or excessive burdens on entities subject to Commission authority. With regard to modifying the ISP, the Commission's actions, among other things, enhanced its ability to respond to foreign carriers' anticompetitive behavior in a timely and effective manner and provided U.S. carriers greater flexibility to negotiate lower settlement rates on those routes that are no longer subject to the ISP.

Legal Basis: 47 U.S.C. 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

Section Number and Title:

63.10(c)(2) and (4) Regulatory classification of U.S. international carriers.

63.17(b) introductory text Special provisions for U.S. international common carriers.

63.21(d) Conditions applicable to all international Section 214 authorizations.

63.22(e), (f) redesignated as (h); (f), (g), Note 1 and Note 2 [added] (f), (g), Note 1 and Note 2 [added] Facilities-based international common carriers.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

Brief Description: Part 64, subpart F implements section 225 of the Communications Act of 1934 (the Act), as amended. Section 225 of the Act codifies Title IV of the Americans with Disabilities Act of 1990 (ADA) which requires that the Commission ensure telecommunications relay services (TRS) are available, “to the extent possible and in the most efficient manner,” to individuals with hearing or speech disabilities in the United States. 47 U.S.C. 225(b)(1) (“In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”). Section 225 of the Act defines “TRS” as telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deafblind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio. These rules provide minimum functional, operational, and technical standards for TRS programs. The rules give states a significant role in ensuring the availability of TRS by treating carriers as compliant with their statutory obligations if they operate in a state that has a relay program certified as compliant by the Commission. The rules also establish a cost recovery and a carrier contribution mechanism (TRS Fund) for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS. In 2013, § 64.601 rules were amended by revising paragraphs (a)(2) through (29) and by adding paragraphs (a)(30), (a)(31), (a)(32), (a)(33), (a)(34), (a)(35), (a)(36), (a)(37), (a)(38), (a)(39), (a)(40), (a)(41), (a)(42), (a)(43), (a)(44), and (a)(45) to § 64.601 defining terms. Also, in 2013, the Commission amended: § 64.604 to

revise paragraphs (b)(2), (b)(4), and (c)(5), by adding paragraphs (c)(12), (c)(13) and (d); amended § 64.605 by revising paragraph (b)(4) [now redesignated as § 9.14(c)(4)]; amended § 64.606 by adding paragraph (a)(4), (g)(3), and (g)(4); and amended § 64.611 by adding paragraphs (a)(3) and (a)(4), by revising paragraph (f), and by adding paragraph (h).

Need: The rules implementing section 225 of the Act are intended to facilitate communication by persons with hearing or speech disabilities in order to give full effect to the accessibility policies embodied in section 225 of the Act, and to ensure that individuals with hearing or speech disabilities receive the same quality of service as hearing individuals when they make TRS calls, regardless of where their calls originate or terminate. Further, the rules are designed to further the TRS functional equivalency mandate by ensuring that internet-based TRS users can be reached by voice telephone users in the same way that voice telephone users are called. These rules also are intended to ensure that emergency calls placed by internet-based TRS users will be routed directly and automatically to the appropriate emergency services authorities by internet-based TRS providers.

Legal Basis: 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

Section Number and Title:

64.601(a)(1) 711.
64.601(a)(2) ACD platform.
64.601(a)(3) American Sign Language.
64.601(a)(4) ANI.
64.601(a)(5) [Redesignated
64.601(a)(7)] ASCII.
64.601(a)(6) [Redesignated
64.601(a)(8)] Authorized provider.
64.601(a)(7) [Redesignated
64.601(a)(9)] Baudot.
64.601(a)(8) [Redesignated
64.601(a)(10)] Call release.
64.601(a)(9) [Redesignated
64.601(a)(12)] Common carrier or carrier.
64.601(a)(10) [Redesignated
64.601(a)(13)] Communications assistant (CA).
64.601(a)(11) [Redesignated
64.601(a)(14)] Default provider.
64.601(a)(12) [Redesignated
64.601(a)(15)] Default provider change order.
64.601(a)(13) [Redesignated
64.601(a)(18)] Hearing carry over (HCO).
64.601(a)(14) [Redesignated
64.601(a)(21)] Interconnected VoIP service.
64.601(a)(15) [Redesignated
64.601(a)(22)] internet-based TRS (iTRS).

64.601(a)(16) [Redesignated
64.601(a)(23)] internet Protocol
Captioned Telephone Service (IP CTS).
64.601(a)(17) [Redesignated
64.601(a)(24)] internet Protocol Relay
Service (IP Relay).
64.601(a)(18) [Redesignated
64.601(a)(25)] IP Relay access
technology.
64.601(a)(19) [Redesignated
64.601(a)(26)] iTRS access technology.
64.601(a)(20) [Subsequently deleted]
Neutral Video Communication Service
Platform.
64.601(a)(21) [Redesignated
64.601(a)(27)] New default provider.
64.601(a)(22) [Redesignated
64.601(a)(28)] Non-English language
relay service.
64.601(a)(23) [Redesignated
64.601(a)(28)] Non-interconnected VoIP
service.
64.601(a)(24) [Redesignated
64.601(a)(30)] Numbering partner.
64.601(a)(25) [Redesignated
64.601(a)(31)] Original default provider.
64.601(a)(26) [Redesignated
64.601(a)(36)] Qualified interpreter.
64.601(a)(27) [Redesignated
64.601(a)(38)] Registered internet-based
TRS user.
64.601(a)(28) [Redesignated
64.601(a)(39)] Registered Location.
64.601(a)(29) [Redesignated
64.601(a)(40)] Sign language.
64.601(a)(30) [Redesignated
64.601(a)(41)] Speech-to-speech relay
service (STS).
64.601(a)(31) [Redesignated
64.601(a)(42)] Speed dialing.
64.601(a)(32) [Redesignated
64.601(a)(43)] Telecommunications
relay services (TRS).
64.601(a)(33) [Redesignated
64.601(a)(44)] Text telephone (TTY).
64.601(a)(34) [Redesignated
64.601(a)(45)] Three-way calling feature.
64.601(a)(35) [Redesignated
64.601(a)(46)] TRS Numbering
Administrator.
64.601(a)(36) [Redesignated
64.601(a)(47)] TRS Numbering
Directory.
64.601(a)(37) [Redesignated
64.601(a)(48)] TRS User Registration
Database.
64.601(a)(38) [Redesignated
64.601(a)(49)] Unauthorized provider.
64.601(a)(39) [Redesignated
64.601(a)(50)] Unauthorized change.
64.601(a)(40) [Redesignated
64.601(a)(51)] Video Relay Service
(VRS).
64.601(a)(41) [Redesignated
64.601(a)(53)] Visual privacy screen.
64.601(a)(42) [Redesignated
64.601(a)(54)] Voice carry over (VCO).
64.601(a)(43) [Redesignated
64.601(a)(55)] VRS access technology.

64.601(a)(44) [Redesignated
64.601(a)(56)] VRS access technology
reference platform.
64.601(a)(45) [Subsequently deleted]
VRS CA service provider.
64.604(b)(2) Speed of answer.
64.604(b)(4) TRS facilities.
64.604(c)(5) Jurisdictional
separation of costs.
64.604(c)(12) Discrimination and
preferences.
64.604(c)(13) Unauthorized and
unnecessary use of VRS or IP CTS.
64.604(d) Other standards.
64.605(b)(4)(ii) [Redesignated 47
CFR 9.14(c)(4)(ii)] Emergency Calling
Requirements.
64.606(a)(4) [Subsequently deleted]
RE: Neutral Video Communications
Service Platform.
64.606(g)(3) VRS provider
compliance plan.
64.606(g)(4) VRS provider
compliance plan corrections.
64.611(a)(3) Certification of
eligibility of VRS users.
64.611(a)(4) TRS User Registration
Database information.
64.611(f) iTRS access technology.
64.611(h) [Subsequently deleted]
Use of Neutral Video Communication
Service Platform.
64.615 TRS User Registration
Database and administrator.
64.617 [Subsequently deleted]
Neutral Video Communication Service
Platform.
64.619 VRS Access Technology
Reference Platform and administrator.
64.621 Interoperability and
portability.
64.623 Administrator requirements.
64.630 Applicability of change of
default TRS provider rules.
64.631 Verification of orders for
change of default TRS providers.
64.632 Letter of authorization form
and content.
64.633 Procedures for resolution of
unauthorized changes in default
provider.
64.634 Procedures where the Fund
has not yet reimbursed the provider.
64.635 Procedures where the Fund
has already reimbursed the provider.
64.636 Prohibition of default
provider freezes.

Subpart V—Rural Call Completion

Brief Description: These rules establish a framework to address the completion of long-distance telephone calls to rural areas for certain providers of long-distance voice service. The rules also prohibit false ring signaling for long-distance voice service providers.

Need: These rules are needed to help eliminate the problem of non-completion of calls to rural areas.

Legal Basis: 47 U.S.C. 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), and 403.

Section Number and Title:
64.2101 Definitions.

Subpart W—Ring Signaling Integrity

64.2201 Ringing Indication
Requirements.

Subpart EE—TRS Customer Proprietary Network Information

Brief Description: These rules implement customer proprietary network information (CPNI) protections for users of telecommunications relay services (TRS) and point-to-point video service pursuant to sections 4, 222, and 225 of the Act, as amended. The rules dictate the conditions under which a TRS provider may use, disclose, or permit access to CPNI, how TRS providers may seek approval for use of CPNI, notices that TRS providers must provide regarding use or disclosure of CPNI, the safeguards for the use and disclosure of CPNI that TRS providers must implement, and the procedures TRS providers must follow in the event of a breach of CPNI security.

Need: These rules are necessary to allow appropriate use and disclosure of CPNI by TRS providers, to inform TRS users of how their CPNI can be used and disclosed, and to protect against unnecessary and unlawful use and disclosure of TRS users' CPNI.

Legal Basis: 47 U.S.C. 154, 222, 225.

Section Number and Title:

64.5101 Basis and purpose.

64.5103 Definitions.

64.5105 Use of customer proprietary network information without customer approval.

64.5107 Approval required for use of customer proprietary network information.

64.5108 Notice required for use of customer proprietary network information.

64.5109 Safeguards required for use of customer proprietary network information.

64.5110 Safeguards on the disclosure of customer proprietary network information.

64.5111 Notification of customer proprietary network information security breaches.

Subpart FF—Inmate Calling Services

Brief Description: These rules reduce the rates for interstate inmate calling services by requiring providers to charge cost-based rates. The rules establish interim rate caps for debit and prepaid calling. The rules also prohibit billing-

related call blocking unless the provider has an alternative means to pay for a call and special charges for technologies used to access telephone relay service. They also require inmate calling service providers to submit an annual report to the Commission.

Need: These rules are needed to establish just, reasonable, and fair rates for interstate inmate calling services.

Legal Basis: 47 U.S.C. 151, 154(i)-(j), 201, 225, 276, and 303(r).

Section Number and Title:

64.6000 Definitions.

64.6030 Inmate Calling Services Interim Rate Cap.

64.6050 Billing-Related Call Blocking.

64.6060 Annual Reporting and Certification Requirement.

PART 73—RADIO BROADCAST SERVICES

Subpart A—AM Broadcast Stations

Brief Description: This rule helps establish a single protection scheme for tower construction and modification near AM tower arrays and designates “moment method” computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. (*An Inquiry Into the Commission’s Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Third Report and Order and Second Order on Reconsideration, FCC 13–115).

Need: This rule is necessary to simplify the Commission’s licensing procedures by replacing time-consuming direct measurement procedures with an efficient computer modeling methodology that is reflective of current practices.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.45(c) intro. AM antenna systems.

Subpart B—FM Broadcast Stations

73.316(e) FM antenna systems.

Subpart E—Television Broadcast Stations

73.685(h) Transmitter location antenna system.

Subpart G—Low Power FM Broadcast Station (LPFM)

Brief Description: These rules implement the provisions of the Local Community Radio Act of 2010. They also propose changes to rules intended to promote the low power FM service’s localism and diversity goals, reduce the potential for licensing abuses, and

clarify certain rules. (*Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Sixth Report and Order, FCC 12–144).

Need: These rules are necessary to implement the provisions of the Local Community Radio Act of 2010.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.807 Minimum distance separation between stations.

73.809(a) intro. Interference protection to full service FM stations.

73.810 Third Adjacent channel interference.

73.811 LPFM power and antenna height requirements.

73.825 Protection to reception of TV channel 6.

73.827 Interference to the input signals of FM translator or FM booster stations.

Brief Description: This rule helps protect the input signals of FM translator and FM booster stations from interference by low power FM stations. (*Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Sixth Order on Reconsideration, FCC 13–134).

Need: This rule is necessary to prevent interference from low power FM stations and protect the signals of FM translator and booster stations.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.827(a) intro., (a)(1) and (b) Interference to the input signals of FM translator or FM booster stations.

Brief Description: These rules implement the provisions of the Local Community Radio Act of 2010. They also propose changes to rules intended to promote the low power FM service’s localism and diversity goals, reduce the potential for licensing abuses, and clarify certain rules. (*Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Sixth Report and Order, FCC 12–144).

Need: These rules are necessary to implement the provisions of the Local Community Radio Act of 2010.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.850(c) Operating schedule.

73.853(a)(3), (b)(4), and (c) Licensing requirements and service.

73.855 Ownership limits.

73.860 Cross-ownership limits.

73.870(a) intro. Processing of LPFM broadcast station applications.

73.871(c)(5), (6), and (7)

Amendment of LPFM broadcast station applications.

73.872 (b), (c)(4), (d), and (e) Selection procedure for mutually exclusive LPFM applications.

73.873 LPFM license period.

Brief Description: This rule helps establish a single protection scheme for tower construction and modification near AM tower arrays and designates “moment method” computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. (*An Inquiry Into the Commission’s Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Third Report and Order and Second Order on Reconsideration, FCC 13–115).

Need: This rule is necessary to simplify the Commission’s licensing procedures by replacing time-consuming direct measurement procedures with an efficient computer modeling methodology that is reflective of current practices.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.875(c) intro. Modification of transmission systems.

Subpart H—Rules Applicable to All Broadcast Stations

Brief Description: These rules help establish a single protection scheme for tower construction and modification near AM tower arrays and designates “moment method” computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. (*An Inquiry Into the Commission’s Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Third Report and Order and Second Order on Reconsideration, FCC 13–115).

Need: These rules are necessary to simplify the Commission’s licensing procedures by replacing time-consuming direct measurement procedures with an efficient computer modeling methodology that is reflective of current practices.

Legal Basis: 47 U.S.C. 154, 303, 334, 336, and 339.

Section Number and Title:

73.1675(c)(1) Auxiliary antennas.

73.1690(c) intro. Modification of transmission systems.

Subpart J—Class A Television Broadcast Stations

73.6025(c) Antenna system and station location.

SUBCHAPTER C—BROADCAST RADIO SERVICES**PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES****Subpart—General; Rules Applicable to All Services in Part 74**

Brief Description: Revises scope of rules within the subpart to streamline and modernize the Commission's experimental radio rules. (*Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules 2006 Biennial Review of Telecommunications Regulations—Part 2 Administered by the Office of Engineering and Technology (OET)*, Report and Order, FCC 13–15).

Need: These rules are necessary to define the scope of the service defined in the subpart and implement the Commission's streamlining of the experimental radio rules.

Legal Basis: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

Section Number and Title:

74.1 Scope.

Brief Description: Revises scope of rules within the subpart to streamline and modernize the Commission's experimental radio rules. (*Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules 2006 Biennial Review of Telecommunications Regulations—Part 2 Administered by the Office of Engineering and Technology (OET)*, Report and Order, FCC 13–15).

Need: These rules are necessary to define the scope of the service defined in the subpart and implement the Commission's streamlining of the experimental radio rules.

Legal Basis: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

Section Number and Title:

74.5 intro. Cross reference to rules in other parts.

Brief Description: Revises scope of rules within the subpart to streamline and modernize the Commission's experimental radio rules. (*Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules 2006 Biennial Review of Telecommunications Regulations—Part 2 Administered by the Office of Engineering and Technology (OET)*, Report and Order, FCC 13–15).

Need: These rules are necessary to define the scope of the service defined in the subpart and implement the Commission's streamlining of the experimental radio rules.

Legal Basis: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

Section Number and Title:

74.15 Station license period.

Brief Description: Revises scope of rules within the subpart to streamline and modernize the Commission's experimental radio rules. (*Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules 2006 Biennial Review of Telecommunications Regulations—Part 2 Administered by the Office of Engineering and Technology (OET)*, Report and Order, FCC 13–15).

Need: These rules are necessary to define the scope of the service defined in the subpart and implement the Commission's streamlining of the experimental radio rules.

Legal Basis: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336, and 554.

Section Number and Title:

74.16 Temporary extension of station licenses.

74.28 Additional orders.

Subpart G—Low Power TV and Translator Stations

Brief Description: Revises rule to cross reference revised experimental radio rules. (*Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission's Rules and Streamlining Other Related Rules 2006 Biennial Review of Telecommunications Regulations—Part 2 Administered by the Office of Engineering and Technology (OET)*, Report and Order, FCC 13–15).

Need: This rule is necessary to cross reference rules applicable to the service covered by this subpart and implement the Commission's streamlining of the experimental radio rules.

Legal Basis: 47 U.S.C. 154, 303, 307, 309, 336, and 554.

Section Number and Title:

74.780 Broadcast regulations applicable to translators and low power stations.

Subpart L—FM Broadcast Translator Stations and FM Broadcast Booster Stations

Brief Description: This rule helps establish a single protection scheme for tower construction and modification near AM tower arrays and designates "moment method" computer modeling

as the principal means of determining whether a nearby tower affects an AM radiation pattern. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Third Report and Order and Second Order on Reconsideration, FCC 13–115).

Need: This rule is necessary to simplify the Commission's licensing procedures by replacing time-consuming direct measurement procedures with an efficient computer modeling methodology that is reflective of current practices.

Legal Basis: 47 U.S.C. 154, 303, 307, 309, 336, and 554.

Section Number and Title:

74.1237(e) Antenna location.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**Subpart K—Technical Standards**

Brief Description: This rule addresses cable operators ability to encrypt the basic service tier in all-digital systems, provided that those cable operators undertake certain consumer protection measures for a limited period of time in order to minimize any potential subscriber disruption. (*Basic Service Tier Encryption; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Report and Order, FCC 12–126).

Need: This rule is necessary to protect consumers if a cable operator encrypts the basic service tier.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.630(a) Compatibility with consumer electronics equipment.

Subpart O—Competitive Access to Cable Programming

Brief Description: These rules establish policies and procedures for addressing exclusive contracts involving satellite-delivered, cable-affiliated programming on a case-by-case basis. (*Revision of the Commission's Program Access Rules*, Report and Order, FCC 12–123).

Need: These rules are necessary to promote competition in the video distribution market.

Legal Basis: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552,

554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1002(c)(3)(i), (ii) intro., (4) intro., and (5) intro. Specific unfair practices prohibited.

76.1003(e)(1), (j), and (m) Program access proceedings.

76.1004(b) Applicability of program access rules to common carriers and affiliates.

Subpart S—Open Video Systems

76.1507(a)(3) and (b) Competitive access to satellite cable programming.

PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

Subpart A—Video Programming Owners, Providers, and Distributors

Brief Description: This rule implements the *Twenty-First Century Communications and Video Accessibility Act of 2010* by requiring video programming distributors and video programming providers (including program owners) to make televised emergency information accessible to individuals who are blind and visually impaired. (*Accessible Emergency Information, Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13–45).

Need: This rule is necessary to ensure access to emergency information for individuals who are blind and visually impaired in furtherance of the *Twenty-First Century Communications and Video Accessibility Act of 2010*.

Legal Basis: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.2(b) and (c) Accessibility of programming providing emergency information.

Subpart B—Apparatus

Brief Description: These rules implements the *Twenty-First Century Communications and Video Accessibility Act of 2010* by requiring the manufacturers of devices that display video programming to ensure that certain apparatus are able to make available audio description and accessible emergency information provided via the secondary audio stream. (*Accessible Emergency Information, Apparatus Requirements for Emergency Information and Video Description: Implementation of the*

Twenty-First Century Communications and Video Accessibility Act of 2010, Report and Order, FCC 13–45).

Need: These rules are necessary to ensure access to audio description and emergency information for individuals who are blind and visually impaired in furtherance of the *Twenty-First Century Communications and Video Accessibility Act of 2010*.

Legal Basis: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.105(a),(b), and (c) Audio description and emergency information accessibility requirements for all apparatus.

79.106 Audio description and emergency information accessibility requirements for recording devices.

Brief Description: These rules modify and clarify prior Commission decisions regarding apparatus used by consumers to view video programming. (*Closed Captioning of internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order on Reconsideration, FCC 13–84).

Need: This rule is necessary to ensure access to video programming for those that are deaf or hard of hearing in furtherance of the *Twenty-First Century Communications and Video Accessibility Act of 2010*.

Legal Basis: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.101(a)(2) note Closed caption decoder requirements for analog television receivers.

79.102(a)(3) note Closed caption decoder requirements for digital television receivers and converter boxes.

79.103(a) note Closed caption decoder requirements for apparatus.

79.104 (a) note Closed caption decoder requirements for recording devices.

PART 80—STATIONS IN THE MARITIME SERVICE

Subpart D—Operator Requirements

Brief Description: The part 80 rules state the conditions under which radios may be licensed and used in the maritime services, but these rules do not govern radio stations operated by agencies of the U.S. Government. Subpart D sets forth operator requirements, and section 80.151 provides for classification of operator licenses and endorsements.

Need: Section 80.151(b)(12) was added to include T. Radiotelegraph

Operator Licenses as a type of license issued by the Commission and is needed on an ongoing basis to ensure this type of license is available to licensees.

Legal Basis: 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.151(b)(12) Classification of operator licenses and endorsements.

Subpart H—Frequencies

Brief Description: Section 80.377 lists the frequencies designated for ship earth stations.

Need: By setting forth frequencies that are available for ship earth stations, the Commission furthers the statutory requirement to assign bands of frequencies to the various classes of stations.

Legal Basis: 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

Section Number and Title:

80.377 Frequencies for ship earth stations.

PART 87—AVIATION SERVICES

Subpart B—Applications and Licenses

Brief Description: Section 87.27 states that licenses in the aviation services will normally issued for a ten-year term.

Need: This rule implements, for this rule part, the statutory requirement that licenses for the use of channels be issued for limited periods of time.

Legal Basis: 47 U.S.C. 154, 303 and 307(e).

Section Number and Title:

87.27 License term.

Subpart C—Operating Requirements and Procedures

Brief Description: The part 87 rules state the conditions under which radio stations may be licensed and used in the aviation services, but these rules do not govern U.S. Government radio stations. Subpart C sets forth operating requirements and procedures, and section 87.87 provides classification of operator licenses and endorsements.

Need: Section 87.87(b)(4) added T. Radiotelegraph Operator Licenses as a type of license issued by the Commission under this part and is needed on an ongoing basis to ensure this type of license is available to licensees.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.87(b)(4) Classification of operator licenses and endorsements.

Subpart I—Aeronautical Enroute Stations, Aeronautical Fixed Stations, and Aircraft Data Link Land Test Stations

Brief Description: The part 87 rules state the conditions under which radio stations may be licensed and used in the aviation services, but these rules do not govern U.S. Government radio stations. Subpart I oversees aeronautical enroute stations, aeronautical fixed stations, and aircraft data link land test stations. Sections 87.285 and 87.287 focus on aircraft data link land test stations, and these sections govern the scope of service and frequencies assignable, respectively.

Need: Sections 87.285 and 87.287 are both needed on an ongoing basis to provide for the operation of aircraft data link land test stations in the public interest. Section 87.285 sets forth the scope of services, while section 87.287 indicates the assignable frequencies to aircraft data link land test stations.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.285 Scope of service.

87.287 Frequencies.

Subpart L—Aeronautical Utility Mobile Stations

Brief Description: The part 87 rules state the conditions under which radio stations may be licensed and used in the aviation services, but these rules do not govern U.S. Government radio stations. Subpart L sets forth rules for aeronautical utility mobile stations, and section 87.349 provides for assignable frequencies under these rules.

Need: Section 87.349(f) was added to section 87.349 for assignment of the 1090 MHz frequency for use by aeronautical utility mobile stations for ground vehicle identification and collision avoidance after coordination with the FAA and provides for five specific conditions, and this rule is needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.349 Frequencies.

Subpart Q—Stations in the Radiodetermination Service

Brief Description: The part 87 rules state the conditions under which radio stations may be licensed and used in the aviation services, but these rules do not govern U.S. Government radio stations. Subpart Q provides rules for stations in the radiodetermination service. Section 87.475 sets forth assignable frequencies under this part while section 87.483

describes and governs audio visual warning systems.

Need: Sections 87.475(b)(10)–(14) were added to provide additional frequencies for radionavigation land stations while section 87.483 was added to explain and govern audio visual warning systems, and both rules are needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.475 Frequencies.

87.483 Audio visual warning systems.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Subpart A—General Information

Brief Description: These rules address permissible content under the Travelers' Information Stations (TIS) rules must continue to have a nexus to travel, an emergency, or an imminent threat of danger. The rules also define and authorize TIS, to allow the use of all Part 90 facilities, including TIS, for the transmission of "any communications related directly to the imminent safety-of-life or property," and for emergency communications "during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster.

Need: These rules are necessary to promote an efficient and effective TIS system in order to ensure travelers have access to emergency information relevant to their journey.

Legal Basis: 47 U.S.C. 54(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.7 Definitions

Subpart F—Radiolocation Service

Brief Description: The part 90 rules govern private land mobile radio services. Subpart F sets forth rules for radiolocation services. Section 90.103 provides for eligibility requirements and assignable frequencies for radiolocation services under this part.

Need: The revised text of section 90.103(c)(30) explains that this frequency band is shared with and is on a secondary basis to the Government Radiolocation Service, the Fixed Satellite Service in part 25, and the Citizens Broadband Radio Service in part 96 and that no new licenses for Non-Federal Radiolocation Services in this band will be issued after July 23, 2015. This rule is needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.103 Radiolocation service.

Subpart H—Policies Governing the Assignment of Frequencies

Brief Description: These rules provide detailed information concerning the policies under which the Commission assigns frequencies for the use of licensees under this part, frequency coordination procedures, and procedures under which licensees may cooperatively share radio facilities.

Need: The rules discuss the conditions and limitations by which authorized stations may share their station.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.179 Shared use of radio stations

Subpart I—General Technical Standards

Brief Description: The part 90 rules govern private land mobile radio services. Subpart I sets forth general technical standards. Section 90.203 describes the certification required for transmitters.

Need: Section 90.203(p) is needed on an ongoing basis to provide for the certification requirements for signal boosters. 90.205 is needed on an ongoing basis for efficient and effective operations without interference.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.203 Certification required.

90.205 Power and antenna height limits

Subpart J—Non-Voice and Other Specialized Operations

Brief Description: These rules address permissible content under the Travelers' Information Stations (TIS) rules must continue to have a nexus to travel, an emergency, or an imminent threat of danger. The rules also define and authorize TIS, to allow the use of all Part 90 facilities, including TIS, for the transmission of "any communications related directly to the imminent safety-of-life or property," and for emergency communications "during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster.

Need: These rules are necessary to promote an efficient and effective TIS system in order to ensure travelers have access to emergency information relevant to their journey.

Legal Basis: 47 U.S.C. 4(i), 11, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.242 Travelers' information stations.

Brief Description: Section 90.250 describes how meteor burst communications may be authorized for the use of private radio stations.

Need: This rule furthers the Commission's interests in promoting the use of the radio spectrum by setting forth the frequency bands, technical requirements, and geographic use area for this particular type of radio communication.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.250 Meteor burst communications.

Subpart N—Operating Requirements

Brief Description: The part 90 rules govern private land mobile radio services. Subpart N sets forth operating requirements. Section 90.425 requires stations licensed under this part to transmit identification in accordance with the listed procedures.

Need: Section 90.425(f) was added to provide special provisions for stations licensed under this part that are not classified as commercial mobile radio service providers under part 20 of this chapter, and the rule is needed on an ongoing basis.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.425 Station identification.

Subpart R—Regulations Governing the Licensing and Use of Frequencies in the 763–775 and 793–805 MHz Bands

Brief Description: These rules primarily address technical issues associated with the 758–769/788–799 MHz band, which is licensed to the First Responder Network Authority (FirstNet) on a nationwide basis.

Need: To set forth the regulations governing the licensing and operations of all systems operating in the 758–775 MHz and 788–805 MHz frequency bands, including eligibility, operational, planning and licensing requirements and technical standards for stations licensed in these bands.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Section Number and Title:

90.523 Eligibility.

90.533 Transmitting sites near the U.S./Canada or U.S./Mexico border.

90.542 Broadband transmitting power limits.

90.543 Emission limitations.

90.549 Transmitter certification.

90.555 Information exchange.

PART 101—FIXED MICROWAVE SERVICES**Subpart C—Technical Standards**

Brief Description: Section 101.129 describes what a radio station applicant must determine with respect to technical considerations applicable to transmitter locations prior to filing its license application.

Need: This rule furthers the Commission's interest in managing the use of the radiofrequency spectrum as well as its statutory requirement to determine the location of individual stations.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

101.129 Transmitter location.

[FR Doc. 2024–21111 Filed 9–16–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 595**

[Docket No. NHTSA–2024–0046]

RIN 2127–AL64

Make Inoperative Exemptions; Retrofit Air Bag On-Off Switches and Air Bag Deactivations

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice of Proposed Rulemaking proposes amendments to the requirements and processes for individuals to request that the agency permit them to have an air bag on-off switch installed in their vehicle. The proposed amendments would eliminate the sunset date, and would also narrow the population of people eligible to have an on-off switch installed. Furthermore, the agency also proposes amendments to several appendices, and proposes the addition of a new appendix. Lastly, this NPRM proposes that NHTSA codify its process for reviewing requests for air bag deactivations, which are currently granted or denied through the agency's enforcement discretion. In this document, NHTSA solicits feedback from the public to better inform the agency's decision-making on the proposed amendments.

DATES: You should submit your comments early enough to be received not later than November 18, 2024.

Proposed effective date: We propose that the effective date for the amendments in this rulemaking action would be immediately after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. EST, Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. (For more details, please see the Privacy Act discussion below.) We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> at any time or to 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 Federal Holidays. Telephone: (202) 366–9826.

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.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78) or you may visit <https://www.dot.gov/privacy.html>.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential

business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Ms. Carla Rush, Office of Crashworthiness Standards, Telephone: (202) 366-4583, Facsimile: (202) 493-2739. For legal issues, you may contact Mr. Matthew Filpi, Office of the Chief Counsel, Telephone: (202) 366-2992, Facsimile: (202) 366-3820. The mailing address of these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

Since the late 1990s, NHTSA has permitted, under certain circumstances, both manufacturers and repair shops to install switches in motor vehicles that

allow the occupant to turn on and off the vehicle's air bag system. This installation would typically be a violation of the "make inoperative" provision of the National Traffic and Motor Vehicle Safety Act, but NHTSA added an express exemption to that provision for air bags because of the threat of injury that early air bag systems posed to children and smaller statured occupants. This exemption—49 CFR part 595 subpart B—outlines the process by which an individual can petition the agency for an air bag on-off switch to be installed in their vehicle.

NHTSA has stated repeatedly since creating part 595 subpart B that the solution to the dangers posed by early air bag systems was advanced air bag systems that could adapt or suppress their deployment based on the vehicle occupant. Accordingly, NHTSA has repeatedly put a sunset date on the on-off switch provision, with the most recent sunset date in 2015. Since then, NHTSA has continued to use its enforcement discretion to grant requests for air bag on-off switches. The agency has also used its enforcement discretion to grant air bag system deactivation in special circumstances, even though the Federal Motor Vehicle Safety Standards (FMVSS) do not currently provide a formal process for requesting deactivation. This NPRM proposes several updates to part 595 to take into account the continued development and effectiveness of advanced air bag systems. Additionally, the NPRM proposes codifying the process by which individuals may petition the agency for air bag deactivation in special circumstances. The agency seeks public comment on the proposals listed below.

II. Background

A. Regulatory History of Air Bag On-Off Switches and Deactivation

To prevent or mitigate the risk of injuries or fatalities in frontal crashes, FMVSS No. 208, Occupant Crash Protection,¹ requires that passenger vehicles be equipped with seat belts and frontal air bags. Although FMVSS No. 208 did not require frontal air bags on passenger cars until model year (MY) 1998 and on multipurpose passenger vehicles and light trucks until MY 1999, air bags were already in widespread use by the early 1990s. These early-generation air bags were highly effective in protecting occupants in frontal crashes, but caused a number of fatalities to certain occupants who were

especially vulnerable to air bag-related risks.

NHTSA has long maintained that the long-term solution to the problem of air bag-related injuries to these at-risk populations was the development and widespread implementation of advanced air bag systems, which could sense the kind of occupant seated and adjust deployment to protect at-risk passengers. However, during the 1990s, when air bag-related injuries and fatalities emerged as a safety problem, advanced air bags were still a nascent technology.² To provide time for the development and dissemination of advanced air bag systems into new vehicle production, and to address safety concerns posed by pre-advanced air bags in vehicles already on the road, NHTSA implemented an array of interim measures designed to protect those passengers most susceptible to air bag-related injuries. These measures focused both on behavioral changes (e.g., consumer education on the importance of seat belts and on putting children in rear seating positions) and relatively modest technological changes (e.g., amending FMVSS No. 208 to temporarily allow for depowered air bags and permitting installation of on/off switches).

Consumer Education Efforts

A particular focus of these measures was efforts to protect children from air bag related injuries and fatalities. Early data indicated that children were at a significant risk of harm from air bags. The data indicated that children who were either seated in child restraint systems (CRS)³ or seated without CRSs were at risk of serious injury or death when seated in a position with a frontal air bag. Because of the agency's significant concern for the safety of children, NHTSA took multiple actions throughout the 1990s to protect children from potential harm from air bags.

First, the agency began providing CRS recommendations informing caretakers how and where they should equip child restraints in a vehicle. NHTSA's recommendation has always been to install CRSs in the back seat of vehicles.

² An advanced air bag senses or responds to differences in crash severity, occupant size or the position of the occupant relative to the air bag at the time of a crash. NHTSA amended FMVSS No. 208 in 2000 to require advanced air bags at the front outboard seats in new passenger vehicles and light trucks, implementing the requirement on a two-stage phase-in schedule (May 12, 2000 final rule, 65 FR 30679). Per FMVSS No. 208, currently all new passenger vehicles and light trucks sold in the United States must meet the advanced air bag requirements.

³ Child Restraint Systems refers to devices such as rear-facing child seats, forward-facing child seats, and booster seats.

¹ 49 CFR 571.208.

Furthermore, there are different CRSs for children of different ages. NHTSA recommends that from birth to 12-months old a child should be secured in a rear-facing CRS. From 1 year old to 3 years old NHTSA recommends keeping a child in a rear facing seat for as long as possible—the child's height and weight will determine when they should be moved to a forward-facing CRS. From 4 years old to 7 years old NHTSA recommends keeping a child in a forward-facing CRS until they exceed the weight and height maximums for the respective seat. Once a child outgrows the forward-facing seat NHTSA recommends children be belted using the traditional seat belt, but with the use to a booster seat; children should remain in a booster seat until they are tall enough to fit in a seat belt properly without the assistance of a booster seat. NHTSA recommends that the child be belted in the back seat of a vehicle for all of these different stages.

Second, the agency made several recommendations and took several actions to ensure children seated in the front were protected from air bags.⁴ Early on, the agency primarily encouraged behavioral changes from owners of vehicles with air bags. For example, in the early 1990s, agency testing showed that using a rear-facing child restraint in the front seat of a vehicle where frontal air bags were active presented a significant risk to child occupants. In December 1991 the agency issued a Consumer Advisory warning owners of rear-facing child restraints to not use such devices in the front seat of a vehicle equipped with a passenger air bag. Throughout the 1990s, NHTSA released several additional News Releases on this issue. NHTSA also took regulatory action on this issue in 1993, when it issued a final rule which, in part, required that vehicles equipped with air bags include labels on sun visors providing specific cautions, including a statement not to install rearward-facing child seats in front passenger positions. The agency took further regulatory action in 1994, when it required rear-facing child restraints manufactured on or after August 15, 1994, to include a warning against using the restraint in any vehicle seating position equipped with an air bag.

Third, the agency took a number of other communication-based actions to improve safety outcomes relating to children and air bags. On October 27,

1995, after several fatalities to children seated in air bag-equipped seating positions, NHTSA issued a warning in a press release, "SAFETY AGENCY ISSUES WARNING ON AIR BAG DANGER TO CHILDREN." In the press release, the agency warned that children sitting in air bag-equipped seating positions not restrained by a seat belt could be seriously injured or killed by an air bag. The release also stated in very strong terms that parents should ensure their children are belted in the back seat of a vehicle whenever possible. During the late 1990s, the agency also published several articles in widely circulated journals and periodicals on the dangers air bags pose to children. NHTSA has continued this education campaign by publishing information on the NHTSA website on the dangers air bags pose to children.

In addition to these efforts to protect children, NHTSA also considered that certain adult passengers were at risk from air bag systems. As described in the paragraphs above, many of the agency's attempts to both educate the public and improve vehicle technology countermeasures to increase the safety outcomes of early air bag systems were focused on children. The agency has also acknowledged in both informal guidance as well as previous rulemakings that certain adults may also be at risk of serious injury from air bag systems. For example, certain smaller-statured individuals may have to sit closer to the steering wheel to reach the foot pedals, which may put them at increased risk of injury if an air bag were to deploy. NHTSA's website recommends that individuals sit at least 10 inches away from the steering wheel to reduce the risk of injury from air bag deployment.⁵ Accordingly, individuals who must sit closer than 10 inches to the steering wheel to reach the pedals may need to have an air bag on-off switch installed. The 1997 final rule that allowed for air bag on-off switches to be installed (discussed below) explicitly discussed specific situations where adult passengers (including adult drivers) may need an on-off switch installed.

Vehicle Technology Countermeasures

Although NHTSA recommended (and continues to recommend) that children be placed in a rear seating position and that adults sit 10 inches or more away from the steering wheel, the agency recognized early on that there were

instances where this guidance would not be helpful. For example, certain vehicles don't have rear seats and certain adults can't sit more than 10 inches from the steering wheel without their feet reaching the foot pedals. When the agency first considered taking action to improve vehicle technology countermeasures in the mid-1990s to ensure children and shorter statured adults were protected from potential harm from air bags, advanced air bag systems were still a nascent technology. Starting in 1995, NHTSA began facilitating a few different types of vehicle technology countermeasures: original equipment on-off switches, retrofit on-off switches, and air bag deactivations.

Original Equipment On-Off Switches.

In 1995, NHTSA for the first time promulgated a final rule that allowed manufacturers the option of installing a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles in which infant restraints could only be used in the front seat. This final rule was the first instance in which the agency allowed an original equipment manufacturer (OEM) to install an air bag on-off switch, but the scenario in which the OEM on-off switch could be installed was very narrow and left up to the discretion of the OEM.⁶ Because on-off switches were intended only as a temporary measure, the agency sunset this provision. The provision sunset on September 1, 2012.⁷

Retrofit on-off switches. In 1997, NHTSA published another final rule addressing air bag on-off switches.⁸ This rule broadened the 1995 final rule that had been extended in 1997, and focused on more than just children needing protections from on-off switches.

Under National Traffic and Motor Vehicle Safety Act (Safety Act), 49 U.S.C. 30122, no manufacturer, distributor, dealer, rental company, or motor vehicle repair business may knowingly make inoperative any part of a device or element of design installed or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard. This provision is commonly referred to as the "make inoperative" provision of the Safety Act. Because of this provision, unless NHTSA explicitly exempts a manufacturer, distributor, dealer, rental company, or motor vehicle repair business from this requirement, those entities cannot knowingly make a compliant motor vehicle or motor vehicle part inoperative. In other words,

⁴ For a detailed history of all actions NHTSA took before the 1997 final rule allowing for retrofit air bag on-off switches, see 61 FR 40784, 40787–88, *Federal Motor Vehicle Safety Standards; Occupant Crash Protection* (July 26, 1996).

⁵ <https://www.nhtsa.gov/older-drivers/driving-safely-while-aging-gracefully#:~:text=Sit%20at%20least%20ten%20inches,to%20always%20wear%20your%20seatbelt>.

⁶ FMVSS 208 S4.5.4.

⁷ See *id.*

⁸ 62 FR 62406.

without an explicit exemption from this requirement, the entities listed above could not knowingly make air bags inoperative, because they would be making a FMVSS No. 208 compliant motor vehicle part inoperative.

Among additional details discussed below, the most notable action the 1997 final rule⁹ took was creating an explicit exemption for motor vehicle dealers and repair businesses from the make inoperative provision of the Safety Act. This exemption permitted on-off switches to be installed not just in new vehicles but also to be retrofitted into vehicles that had already been sold. It also meant that an additional entity—motor vehicle repair businesses—could now install on-off switches. Thus, NHTSA's regulations, at that point, allowed for two different types of on-off switches: (1) original equipment air bag switches, installed as original equipment on a vehicle before the vehicle was sold other than for resale; and (2) retrofit air bag switches, installed after the vehicle had been produced and sold to the consumer. Because retrofit air bag switches are installed after purchase of a vehicle, the onus is on the vehicle owner to decide if they would like an on-off switch installed. However, as discussed below, air bags generally improve safety outcomes significantly for most individuals involved in crashes. So instead of leaving the decision up to the individual whether an on-off switch would produce a beneficial safety outcome for a specific individual, the 1997 final rule created a process by which individuals could submit a request to NHTSA for an air bag on-off switch, and if approved, the individual could then have one installed. That process is discussed in more detail in Section II.C. As with original equipment on-off switches, the part 595 exemption for retrofit on-off switches was subject to a sunset provision; this exemption expired on September 1, 2015.¹⁰

Air bag deactivations. Although air bag on-off switches were an effective solution to protect individuals who may be vulnerable to air bag systems, there are certain scenarios where on-off switches cannot be installed in a vehicle. In situations where an on-off switch cannot be installed, the 1997 final rule outlined that NHTSA would continue to use its enforcement discretion to allow air bag deactivation. The key distinction between an air bag switch and air bag deactivation is that the vehicle operator can turn the air bag system on or off with a switch, whereas

once a repair shop or manufacturer deactivates an air bag system, the vehicle operator cannot turn the system back on. NHTSA has not codified a process for individuals to request an air bag system deactivation.

B. Background on Advanced Air Bag Systems

As discussed in the section above, early air bag technology presented several safety risks to both children and smaller-statured individuals. The agency has repeatedly expressed that the solution to the dangers from early air bag technology was to develop advanced air bag technology. This belief is also reflected in the sunset dates for air bag on-off switches. FMVSS No. 208, Occupant crash protection, requires that all new passenger vehicles and light trucks sold in the United States meet certain minimum performance criteria for protecting vehicle occupants during and after a collision. "Advanced air bag requirements" is a term used to refer collectively to a subset of these requirements that was added to FMVSS No. 208 as part of a May 12, 2000, final rule to protect children and other at-risk occupants from air bag-related injury. The advanced air bag requirements became fully phased-in on September 1, 2010.

Under the advanced air bag requirements, both the driver-side and passenger-side frontal air bag system must pass several barrier crash tests using 50th percentile adult male and 5th percentile adult female dummies in both belted and unbelted conditions (the tests require various test speeds, test conditions, and dummy placement).¹¹ These tests must be performed at both the driver and right front passenger seating positions. In addition to barrier tests (which are designed to protect the adult-sized population at-large), passenger-side advanced air bag systems must also meet several requirements that are intended to protect children. Specifically, passenger-side frontal air bag systems must alter their deployment in the presence of three child-sized test dummies—representing a 12-month-old, a 3-year-old, and a 6-year-old—in multiple positions, both with and without the child restraints specified in Appendix A–1 of FMVSS No. 208. Unlike the barrier tests described above, the tests for deployment in the presence of children are static tests conducted in a stationary setting.

The requirements and static tests related to child and smaller-statured

occupants may be met using one of three strategies: suppression, low risk deployment (LRD), or a dynamic automatic suppression system (DASS). Suppression-based advanced air bag systems will suppress (*i.e.*, not deploy) the passenger air bag in a crash if the system senses a child in a rear-facing CRS, a child in a forward-facing CRS, or a child not in a CRS but who is below a certain size or is out of position in the passenger seat. LRD-based advanced air bag systems will deploy the passenger air bag in all of these situations, but will do so in a low-risk manner that does not exceed certain injury assessment reference values for children.¹² DASS-based advanced air bag systems dynamically suppress air bag deployment during a crash by sensing and interpreting the occupant characteristics and/or locations of occupants in relation to the air bag.¹³

Manufacturers are not required to use the same option for all three child dummy sizes. Currently, all vehicles equipped with advanced air bags use either "conventional" (*i.e.*, non-DASS) suppression or LRD to meet advanced air bag requirements, with the vast majority of manufacturers choosing suppression.¹⁴ For the remainder of the discussion, unless indicated otherwise, "suppression" systems are conventional, non-DASS systems.

Data collected by NHTSA indicate that advanced air bags substantially reduce the risk of air bag-related injuries to children and smaller statured adults. In 1997, when air bag-related fatalities peaked in the era before advanced air bags were introduced, there were 52 air bag-related fatalities, 31 of which were children. Since the introduction of advanced air bags, air bag-related fatalities have declined significantly, and in fact there have been no confirmed air bag-related fatalities among children in vehicles equipped with certified advanced air bags.¹⁵

¹² Compare S19.2, S21.1, & S23.2 with S19.3, S21.4, & S23.4.

¹³ Unlike suppression and LRD, FMVSS No. 208 contains no predefined test procedure associated with the DASS option. A manufacturer wishing to use DASS must petition the agency for an expedited rulemaking under subpart B of part 552. No manufacturer has ever successfully petitioned the agency for this option.

¹⁴ Based on model year 2023 compliance data, the agency estimates that 5 percent of the fleet chooses the LRD option for all required performance tests with child-sized dummies. The remaining vehicles use conventional suppression for all required performance tests with child-sized dummies or a combination of suppression and LRD.

¹⁵ "Counts of Frontal Air Bag Related Fatalities and Seriously Injured Persons," Special Crash Investigations, DOT HS 811 104, January 2009. The agency continues to monitor this issue and has not identified any new cases of air bag-related fatalities in advanced air bag compliant vehicles.

⁹ 62 FR 62406.

¹⁰ 49 CFR 595.5.

¹¹ S5.1.1(b)(2), S5.1.2(b), S14.5.2, S15.1, S14.5.1(b), S16.1(b), S17.

Although it is likely that much of this reduction can be attributed to child safety initiatives (*i.e.*, air bag warning label requirements, changes to State laws, greater enforcement of those laws, and publicity campaigns) that have encouraged parents and caregivers to move children 12 and younger from the front seat to the rear seat of vehicles, the agency nonetheless believes that the complete absence of air bag-related fatalities in children over the last several years demonstrates that advanced air bags provide a crucial safety countermeasure backstop for situations in which children are placed in the front passenger seat.

C. Current Part 595 Subpart B Requirements and Procedures for Obtaining Exemptions for Retrofit On-Off Switches

The 1997 final rule created part 595 subpart B. Subpart B sets out several requirements for vehicle owners who want to request a retrofit on-off switch. Specifically, it identifies five situations in which the agency will authorize on-off switches:

- **Medical condition:** The driver has a medical condition and a doctor indicates that an air bag would pose a special risk of harm to that person and the risk of harm outweighs the risk of the passenger hitting the steering wheel or windshield in a crash;

- **Distance from driver air bag:** Despite taking all reasonable steps to move back from the driver air bag, the driver is not able to maintain a 10-inch distance from the center of his or her breastbone to the center of the driver air bag cover;

- **Infant:** An infant (less than 1 year old) must ride in the front seat because the vehicle has no rear seat, the vehicle's rear seat is too small to accommodate a rear-facing infant seat, or the infant has a medical condition that makes it necessary for the infant to ride in the front seat so the driver can monitor the infant;

- **Child Age 1 to 12:** A child age 1 to 12 must ride in the front seat because the vehicle has no rear seat, children ages 1 to 12 must ride in the front seat of the vehicle because no space is available in the rear seat, or the child has a medical condition that makes it necessary for the child to ride in the front seat so the driver can monitor the child.

These criteria were consistent with the general rationale of the 1997 final

rule, as advanced air bag technology was still in the early stages of development. As discussed previously, the agency created the part 595 petition as a temporary measure to ensure vulnerable passengers were protected from potential harm from air bag systems. It was intended to be a temporary measure as advanced air bag technologies developed. Accordingly, the provision sunset in 2015.

Subpart B of part 595 sets out the specific steps that a vehicle owner/installation technician must follow to obtain an exemption for an on-off switch.¹⁶

If an individual wants an on-off switch installed in their vehicle, they must fill out the request form that can be found in appendix B to part 595. The first portion of this form provides instructions to individuals seeking the installation of an on-off switch, and part of these instructions directs the vehicle owner or lessee to read NHTSA's information brochure on air bag on-off switches, which can be found in appendix A to part 595. After reviewing the brochure, if the vehicle owner/lessee is still interested in having an air bag on-off switch installed, the vehicle owner/lessee then fills the request form out, including an indication of which air bags (passenger or driver) they would like the on-off switch for. The request form includes a list of the eligibility criteria NHTSA deemed acceptable for a retrofit on-off switch in the 1997 final rule with a check box next to each justification. A list of these eligibility criteria is also included in the safety brochure (appendix A to part 595). The applicant must check which justification they are requesting an on-off switch under as part of completing the request form. After completing the request form, the owner/lessee mails the form to NHTSA. NHTSA then reviews the request form and determines whether the owner/lessee should be granted their request to have an on-off switch installed. If NHTSA determines the information provided in the request is sufficient, the agency notifies the individual if the request is granted or denied in writing. If the request is missing information, the agency will request the necessary information from the requestor. In addition to the signed form, NHTSA also sends the installation

form (appendix C to part 595) (to be filled out by the manufacturer or repair shop).

The manufacturer or repair shop has several obligations that it must also comply with under part 595. These include ensuring a telltale light is installed and operating that indicates when the air bag switch is in the "off" mode and providing the owner/lessee of the vehicle with an insert for the vehicle owner's manual that describes the operation of the switch, explains the at-risk groups set forth in Appendix B, and indicates that the on-off switch should only be used in the "off" mode if one of the at-risk groups is present in the relevant seat. The manufacturer or repair shop must also fill out the installation form that can be found in appendix C to part 595 and return it to NHTSA within seven (7) days of installation.

D. Air Bag Deactivations

As noted earlier, while part 595 does not provide for air bag deactivations, NHTSA has been considering requests for air bag deactivations on a case-by-case basis using its enforcement discretion. Under the existing process, vehicle owners who would like to have their air bag system (or part of the system) deactivated must submit their request in a letter to NHTSA with a detailed explanation for why deactivation is necessary. This letter must include information such as the subject vehicle's make, model, and vehicle identification number. In addition, requests based on certain medical conditions other than those for which the National Conference on Medical Indications for Air Bag Deactivation has recommended air bag deactivation must be accompanied by a physician statement.¹⁷ This statement must indicate the particular medical condition of the patient, as well as the physician's judgment that the condition causes air bags to pose a special risk to that person, and that the condition makes the potential harm to the person from contacting an air bag in a crash greater than the potential harm from turning off the air bag.

¹⁶ 49 CFR 595.5, Appendix A Information Brochure, Appendix B Request Form, Appendix C Installation of Air Bag On-Off Switches.

¹⁷ At the request of the National Highway Traffic Safety Administration, the Ronald Reagan Institute of Emergency Medicine, with the assistance of the National Crash Analysis Center (NCAC), both of The George Washington University (GW), convened an expert panel of physicians to formulate recommendations on specific medical indications for air bag deactivation.

Once NHTSA reviews the deactivation request letter, it notifies the requestor in writing of its decision to either grant or deny the request. If NHTSA denies the request, it explains the basis for the denial; if the reason for the denial was a lack of information, the request may be resubmitted with the necessary information. If NHTSA grants the request, it provides the requestor with an authorization letter, a copy of the information brochure contained in appendix A to part 595, labels to be attached to the vehicle interior for alerting vehicle users about the deactivated air bag(s), and a form to be filled out and mailed back to the agency regarding the deactivation. The recipient can then take the authorization letter to a car dealer or a motor vehicle repair business to have their vehicle's air bag deactivated.

III. Proposed Amendments

The changes proposed in this document would revise NHTSA's policies and procedures regarding retrofit on-off switches and deactivations to account for the benefits of advanced air bags. Over the last two and a half decades, NHTSA has repeatedly stated in multiple rulemaking notices that its regulations permitting air bag on-off switches and deactivations were intended to be temporary. During the 1990s, NHTSA's primary reason for allowing air bag on-off switches and deactivations was to provide time for manufacturers to develop advanced air bag technology. NHTSA also continued allowing air bag on-off switches and deactivations even after the phase-in of advanced air bag requirements to promote public acceptance of the technology and to give the agency time to study advanced air bags in real-world situations before making long-term policy decisions regarding the continued need for air bag on-off switches and deactivations.

This rulemaking would complete NHTSA's evaluation of current advanced air bag efficacy and the need for on-off switches and deactivations. Unlike our previous rulemakings in this area, the changes proposed in this document are not intended to be interim solutions. Rather, they represent NHTSA's conclusions regarding the need for air bag switches and deactivations as it exists for the foreseeable future. NHTSA considered several factors in crafting the proposed amendments in this NPRM, including the interest in and need for retrofit air bag on-off switches and air bag deactivations, the degree to which advanced air bags mitigate the risk of air bag-related injuries, and the safety

benefits of advanced air bags relative to retrofit on-off switches and deactivations.

Furthermore, the changes proposed in the following sections will improve motor vehicle safety. As discussed above, data indicate that advanced air bag systems significantly improve safety outcomes for most vehicle occupants. NHTSA acknowledges that certain individuals have the potential to be harmed by air bags, primarily because of their stature; however, advancements in air bag suppression technology have resulted in most air bag suppression systems protecting smaller stature occupants without needing an air bag on-off switch. Retrofit on-off switches can be misused by consumers because they may forget to set the switch to the position appropriate for the passenger occupying the seat. By narrowing the eligibility criteria for obtaining an air bag on-off switch to only include groups that are at heightened risk of air bag-related injuries even with advanced air bag systems, the proposed rule would result in fewer installations of unnecessary retrofit switches. By eliminating the sunset date provision, the proposed rule would increase NHTSA's regulatory flexibility to allow the installation of retrofit air bag on-off switches to serve at-risk groups, regardless of when their vehicles were manufactured. In addition, the proposed rule improves overall agency transparency and public accountability by articulating and codifying NHTSA's processes for approving requests for retrofit air bag on-off switches and, if necessary, for air bag deactivation, when warranted by a safety need.

As the 1997 final rule indicates, the part 595 petition process has always focused on weighing the safety benefits that air bags provide vis-à-vis the potential harm that air bag systems can do to at-risk populations.¹⁸ The development and widespread use of advanced air bag systems has significantly altered this calculus, which is why the agency is proposing changes to part 595's substantive requirements as part of this NPRM.

A. Removal of the Sunset Date Provision for Retrofit Air Bag On-Off Switches

This rulemaking would remove from part 595 subpart B the language limiting the installation of retrofit air bag on-off switches to vehicles manufactured before September 1, 2015. As noted above, when NHTSA authorized air bag on-off switches in past rulemakings, the agency imposed a sunset date for their availability because it believed that

advanced air bags would largely obviate the need for manual air bag on-off switches. NHTSA tried to set these sunset dates far enough in the future to provide sufficient time both for manufacturers to develop advanced air bags and for the agency to assess advanced air bags' effect on safety.

NHTSA has determined that, even with advanced air bags, there is and will be a continuing need for retrofit air bag on-off switches for the foreseeable future for at least some at-risk segments of the population. There is a small segment of the vehicle occupant population (e.g., those that meet our new eligibility criteria to obtain a retrofit air bag on-off switch, which are discussed below) to whom current frontal air bags pose a risk that outweighs a safety benefit, and whose risk characteristics are such that they cannot necessarily be detected or mitigated by current advanced air bag technology. Because the risks to this population are not addressed by advanced air bags, we tentatively believe that it would be safer in some instances for air bags to be suppressed by a manually operated air bag on-off switch than to deploy as designed. This population will likely need the continued availability of retrofit air bag on-off switches for the indefinite future, so NHTSA proposes to remove the sunset date of September 1, 2015, and to continue allowing retrofit air bag on-off switches for certain at-risk populations until further notice.

Comments are requested on this proposal.

B. Adjustment of Criteria for At-Risk Occupants To Obtain a Retrofit Air Bag On-Off Switch for Vehicles Equipped With Advanced Air Bags

This rulemaking proposes to amend the eligibility criteria for owners and users of vehicles equipped with advanced air bags to obtain a retrofit air bag on-off switch under part 595 subpart B. We believe that advanced air bags have sufficiently addressed the safety concerns of some of the groups that were previously deemed at-risk for air bag-related injuries at the time that Part 595 subpart B was established. This rulemaking would narrow the eligibility requirements for obtaining a retrofit air bag on-off switch under part 595 subpart B such that these groups would not all qualify for an air bag on-off switch on vehicles equipped with advanced air bags. The proposed amendments specifically relate to the categories concerning infants in rear-facing CRSs and children ages 1 to 12 who must be transported in the front passenger seat. Below we discuss each in turn.

¹⁸ 62 FR 62406.

i. Exemptions for Infants in Rear-Facing Child Restraint Systems Who Must Be Transported in the Front Passenger Seat

1. Vehicles Certified to the Suppression-Based Compliance Option Would No Longer Be Eligible for an Exemption

This NPRM distinguishes between vehicles meeting the advanced air bag requirements by way of suppression versus via a low-risk deployment option. Under this NPRM, vehicles certified to meet the advanced air bag requirements for children in rear-facing CRSs in the front seat using suppression would not be eligible for a retrofit air bag on-off switch. This proposal reflects our tentative conclusion, based on over two and a half decades of field data, that air bag suppression is an extremely effective tool for protecting children in rear-facing CRSs from air bag-related injuries. Based on these data, NHTSA tentatively believes there is no longer a safety need to permit the installation of retrofit air bag on-off switches in these circumstances.

Like on-off switches, suppression-based advanced air bags mitigate the risk to children in rear-facing CRSs by eliminating the possibility of air bag/CRS interaction entirely. Moreover, the automatic operation of suppression-based advanced air bags makes the suppression systems safer overall as compared to retrofit air bag on-off switches, which do not operate automatically and are susceptible to misuse. Thus, NHTSA tentatively believes there is no longer a safety need to permit the installation of retrofit air bag on-off switches in vehicles equipped with suppression-based advanced air bags for the transport of children in rear-facing CRSs in the front passenger seat. NHTSA tentatively believes that this proposal would benefit safety by reducing the number of unneeded retrofit air bag on-off switches that would be present in the fleet that could potentially be misused.

2. Vehicles Certified to the Low-Risk Deployment Compliance Option Would Still Be Eligible for an Exemption

Under the proposed rule, vehicles certified to meet advanced air bag requirements for children in rear-facing CRSs in the front seat using low risk deployment (LRD) would continue to be eligible for a make inoperative exemption for a retrofit air bag on-off switch.

The agency has decided to differentiate between suppression-based and LRD-based advanced air bag systems for children in rear-facing CRSs because, although NHTSA has confidence in both suppression and

LRD technologies, LRD systems are not as prevalent in the fleet and have not had the same degree of field experience confirming their effectiveness as have suppression systems.

There are several safety considerations specific to rear-facing CRSs interacting with LRD-based advanced air bags that NHTSA believes justify the agency's cautious approach here. First, children in rear-facing CRSs are typically younger and more vulnerable than other at-risk groups. Second, children in rear-facing seats are always exceedingly close to a front-mounted air bag, especially compared to other categories of at-risk occupants. This proximity matters because the primary factor that determines a child's risk of air bag-related injury is the child's proximity to the air bag at the time of deployment. Given that children in rear-facing CRSs are especially at risk for air bag-related injuries because of their constant close proximity to the air bag risk zone as compared to other at-risk groups, NHTSA has determined that it would be prudent at this time to allow vehicle owners with LRD advanced air bag systems to have the option of an on-off switch if they must seat a child in the front seat of their vehicle.

ii. Exemptions for Children Ages 1 to 12 Who Must Be Transported in the Front Passenger Seat

Under the proposed rule, vehicles meeting the advanced air bag requirements that are used to transport children ages 1 to 12 in the front passenger seat (including children secured in a forward-facing CRS) would not be eligible for a make inoperative exemption for a retrofit air bag on-off switch. This change would apply regardless of whether the vehicle is equipped with suppression-based or LRD-based advanced air bags.

NHTSA originally designated children ages 1 to 12 an "at-risk" group for purposes of determining eligibility for an exemption under part 595, to address the dangers that early (non-advanced) air bags posed to unrestrained older children. Identifying this risk group required NHTSA to establish an objective, practicable way of determining both when a child is large enough that the air bags deploying would not pose a significant safety risk, and when a child was behaviorally mature enough that the child was not likely to be out of position at the time an air bag deploys. NHTSA chose age as a proxy for making these determinations, because age normally correlates to a child's size and level of maturity, and it is a simple and

objective way to determine eligibility. However, a child's age is, at best, an imperfect measure of whether the child is at risk for air bag-related injuries because age is an imperfect proxy for size or maturity.

Advanced air bag systems do not rely on age as a proxy for a child's size or likely position at the time of air bag deployment. Rather, they use sensors to detect a child's size and use either sensors or other design features to safely account for children who are out of position at the time of a crash. Because a child's size and position are the two most important indicators of whether it is safe to deploy the air bag (or whether to deploy it in a low-risk manner), advanced air bags can use that data to either suppress the air bag or tailor the air bag's deployment to the child (as opposed to early generation air bags, which would always deploy the air bag at full force in a triggering crash, regardless of the size or position of the occupant). The agency is unaware of a single reported crash fatality of a child aged 1 to 12 (or a child in a forward-facing CRS) that has been attributed to a certified advanced air bag since the technology was introduced. Based on available evidence, the agency believes there is no longer a safety need that justifies permitting the installation of retrofit air bag on-off switches for children ages 1 to 12 (or children in forward-facing CRSs) in vehicles equipped with advanced air bags solely on the basis of age. The agency would continue to approve requests for retrofit on-off switches for children ages 1 to 12 (or children in forward-facing CRSs) in vehicles equipped with non-advanced air bags.

Notwithstanding the agency's tentative conclusion that children ages 1 to 12 (or children in forward-facing CRSs) are not an at-risk group under part 595, subpart B in vehicles equipped with advanced air bags, NHTSA acknowledges that there is a remote possibility an air bag on-off switch may be permissible for these children under certain circumstances, such as if a specific child in that age range has unique characteristics that a vehicle's advanced air bag system has difficulty detecting. Similarly, given the variety of forward-facing and rear-facing CRSs that exist, the agency acknowledges that there is a remote possibility that some advanced air bag systems may not be designed to detect certain models of forward-facing CRSs that have unusual footprints. To address these sorts of edge cases, the agency foresees using its enforcement discretion to permit the installation of retrofit on-off switches in these rare situations.

Comments are requested on the above issues.

C. Requests for Air Bag Deactivations (General Public)

NHTSA proposes to codify the process by which vehicle owners request a “make inoperative” exemption so that they may have their vehicles’ air bags deactivated. This informal process for requesting deactivations was initially intended to be used in a limited number of circumstances where the requestor was eligible for an exemption to install an air bag on-off switch, but an air bag on-off switch was not available from the manufacturer of the requestor’s vehicle. The agency believes it can improve on the deactivation request process with the proposals described in detail below.

NHTSA’s proposal to codify the deactivation request process would improve transparency while keeping the process largely unchanged aside from a few slight modifications. First, NHTSA would require that deactivation requestors certify that they have read the information brochure contained in appendix A, since the safety justification underlying that requirement (*e.g.*, ensuring the requestor is aware of the risks associated with switching off the air bag) applies to deactivations as well as on-off switches. Second, consistent with the requirements for on-off switch exemptions based on a medical need, we would no longer require a physician statement if the deactivation is for a medical purpose. Lastly, we would require that requestors specifically explain why an air bag on-off switch is insufficient for their needs. The reason for this requirement is that NHTSA considers deactivations to be a greater potential risk to overall vehicle safety than on-off switches. A deactivated air bag deprives all vehicle occupants of the safety benefits of air bags regardless of whether they are at-risk of air bag-related injuries, whereas an on-off switch enables occupants who are not at-risk to keep the air bag activated.

NHTSA will continue to evaluate deactivation requests on a case-by-case basis, and will only grant them if the agency believes that doing so is consistent with the Safety Act and is in the interest of motor vehicle safety.

Comments are requested on the codification of the deactivation request process.

D. Exemptions for Law Enforcement and Emergency Vehicles On-Off Switches

NHTSA proposes amending part 595 subpart B to add a process that specifically applies to air bag on-off

switch requests for law enforcement and emergency vehicles, along with a corresponding request form. The form would be codified as appendix D to part 595.

For a number of years, NHTSA has granted requests from law enforcement and emergency service officials to install air bag on-off switches through the exercise of the agency’s enforcement discretion. In the 2012 final rule, the agency explained that one reason for extending the sunset date under part 595 subpart B was to “consider other topics that have arisen over the years such as our continued use of our enforcement discretion for circumstances not covered by part 595 (*e.g.*, the application of retrofit switches for emergency and law enforcement vehicles).” The agency’s primary safety concern with air bags in law enforcement and emergency vehicles is that these vehicles are necessarily outfitted with job-related equipment that could pose a danger to occupants should the air bag deploy. This danger is not necessarily addressed by advanced air bags, since FMVSS No. 208 does not require that advanced air bags be tested in the presence of this job-related equipment, nor would such a requirement be reasonably practicable at this time. Given this concern, we have used our enforcement discretion to permit the installation of retrofit on-off switches and air bag deactivations on law enforcement and emergency vehicles through a process similar to the process used to evaluate deactivation requests from the general public.

In the interest of transparency of agency processes, NHTSA seeks to formalize the process by which law enforcement and emergency service providers obtain make inoperative exemptions for retrofit on-off switch installations. To this end, this NPRM proposes to add a new section to part 595 subpart B specifically for “Emergency Vehicles” along with a corresponding new form contained in appendix D. This new section would contain the procedures that emergency service providers must follow to obtain a make inoperative exemption for their law enforcement or emergency vehicles. The accompanying form would require that a requesting entity certify that the vehicle on which the air bag on-off switch will be installed is intended to be used for law enforcement, fire response, or medical response.

Comments are requested on this proposal.

ii. Deactivations

As with exemption requests from the general public, if a retrofit air bag on-off

switch is unavailable or inadequate for an emergency or law enforcement vehicle, officials may request approval for an air bag deactivation. The process for requesting an air bag deactivation for a law enforcement vehicle or an emergency vehicle would be the same as the process for the general public.

Comments are requested on the above issues. A copy of the law enforcement and emergency response request form can be found in the docket for this NPRM.

E. Update of Information Brochure

NHTSA proposes to revise the Information Brochure contained in appendix A to part 595. Appendix A contains the Information Brochure that air bag on-off switch requestors must read as part of the application process for obtaining an exemption for a retrofit air bag on-off switch under subpart B. The purpose of the Information Brochure is to provide requestors with relevant information about the safety benefits and potential risks of air bags, so that they can make an informed decision whether to request an exemption under part 595 subpart B.

NHTSA codified the Information Brochure as appendix A to part 595 as part of the same November 1997 final rule that established part 595 subpart B. In the more than two decades that have passed since then, air bag technology has evolved substantially. Given these changes, the Information Brochure currently found in appendix A to part 595 is no longer complete or accurate.

To address this problem, this NPRM proposes major revisions to the Information Brochure. The updated brochure would provide more complete and accurate information about current air bag technology to better ensure consumers will make an informed decision regarding whether to request an exemption under part 595 subpart B. The agency has also included stylistic changes, such as formatting changes that make the material more engaging and easier to read, and a 10-inch ruler printed on the outer cover so that drivers can measure their distance to the steering wheel. A copy of our proposed revised Information Brochure for at-risk passengers has been placed in the docket to this NPRM.

The agency seeks comment on our proposed revisions to the Information Brochure contained in Appendix A to part 595.

IV. Estimates of Benefits and Costs

NHTSA performed an economic analysis for the proposed rule, and has determined that the proposed rule would be net beneficial. The agency

found that there would be significant cost savings as a result of the proposed rule. A summary of the economic analysis is below, and the full economic analysis can be found in the docket for this NPRM.

Methodology. To determine the costs and safety impacts of this NPRM, NHTSA considered two baselines in its analysis. The first baseline is what the agency refers to as the Enforcement Discretion Baseline. This baseline considers the status quo, where NHTSA uses its enforcement discretion to grant air bag on-off switch requests since the last sunset for the on-off program for MY 2015 vehicles. This baseline assumes that there is potential for all vehicles (not just MY 2015 and earlier vehicles) to receive exemptions. In other words, this baseline includes analysis of all MY vehicles, rather than incorporating only MY 2015 and earlier vehicles not impacted by the 2015 sunset.

The second baseline is what the agency refers to as the Enforcement Non-Discretion Baseline. This baseline considers a scenario under which the sunset provision is strictly enforced. Under this baseline, the proposed rule has a smaller net effect because enforcing just the sunset provision would yield the same procedural changes as the proposed rule for all MY 2016 and later vehicles. Thus, the net effect under the Enforcement Non-Discretion Baseline would be limited to pre-MY 2016 vehicles with advanced air bags.

Air Bag On-Off Switch Cost Impacts. For this analysis, NHTSA assumed that the volume of annual exemption requests for air bag on-off switches will be equal to the annual average from 2015–2017 (the most recent available data), or 58 requests per year under the *Enforcement Discretion baseline*. For the *Enforcement Non-Discretion baseline*, NHTSA assumed that the number of annual requests will be equal

to the estimated share of all vehicles with advanced air bags comprised of pre-MY 2016 vehicles, multiplied by 58. The share of all vehicles with advanced air bags comprised of pre-MY 2016 vehicles is estimated as the sum of surviving MY 2004 (*i.e.*, the first year with mandatory advanced air bags) through MY 2015 vehicles, divided by the projected sum of MY 2004 through MY 2021 vehicles at the end of 2021. The resulting estimate of the relevant share comprised of pre-MY 2016 vehicles is approximately 59 percent, yielding an estimate of 34.2 requests per year under the *Enforcement Non-Discretion baseline*.

The total annual cost impact for the subset of on-off switch exemption requests that would be eliminated under the proposed rule compared to the costs under the *Enforcement Discretion baseline* is summarized in Table 1 (See the docketed economic analysis for this proposed rule for details):

TABLE 1—ESTIMATED ANNUAL COST IMPACTS IN CASES WHERE THE ON-OFF SWITCH EXEMPTION IS ELIMINATED
[2022 Dollars, Enforcement Discretion Baseline]

Cost item (entity)	Status quo cost	Cost under proposed rule	Net cost impact
Requests (Applicants)	\$686.14	\$0.00	– \$686.14
On-Off Switch Installation (Applicants)	8,186.32	0.00	– 8,186.32
Data Processing and Storage (Government)	61.39	0.00	– 61.39
Documentation and Reporting (Industry)	87.58	0.00	– 87.58
Total	9,021.43	0.00	– 9,021.43

The corresponding annual cost impact under the *Enforcement Non-Discretion baseline* is summarized in Table 2:

TABLE 2—ESTIMATED ANNUAL COST IMPACTS IN CASES WHERE THE ON-OFF SWITCH EXEMPTION IS ELIMINATED
[2022 Dollars, Enforcement Non-Discretion Baseline]

Cost item (entity)	Status quo cost	Cost under proposed rule	Net cost impact
Requests (Applicants)	\$404.06	\$0.00	– \$404.06
On-Off Switch Installation (Applicants)	4,820.80	0.00	– 4,820.80
Data Processing and Storage (Government)	36.15	0.00	– 36.15
Documentation and Reporting (Industry)	51.58	0.00	– 51.58
Total	5,312.60	0.00	– 5,312.60

The total annual cost impact is estimated to be –\$9,021.43 under the *Enforcement Discretion baseline* and –\$5,312.60 under the *Enforcement Non-Discretion baseline*.

Air Bag On-Off Switch Safety Impacts. Safety effects of the proposed rule in this category are assumed to be limited to the reduction in risk for front-seat

passengers 13 years of age or older in vehicles with no on-off switch. NHTSA assumed that advanced air bags are estimated to be equally safe with or without an on-off switch for passengers 12 years of age or younger, because advanced air bags are designed either not to deploy or to deploy in a low-risk manner when small children are present

(*i.e.*, the switch does not offer any benefit or detriment for small children). For passengers 13 years of age or older, reducing on-off switch exemption requests would improve safety by mitigating the risk of traveling while an on-off switch is in the off position, removing the protective effect of the air bag.

The safety benefit per vehicle in this category is estimated as the reduction in fatality risk per mile for front-seat passengers 13 years of age or older, multiplied by the vehicle miles traveled (VMT) where such passengers are present and the monetized value of a unit reduction in fatality risk. Analyses of 2017–2021 Crash Reporting Sampling System data and Fatality Analysis Reporting System data indicate that the front seat of light-duty vehicles was occupied by a passenger 13 years of age or older approximately 12 percent of the time in non-fatal crashes and 14 percent of the time in fatal crashes. Studies have estimated an overall light-duty vehicle occupant fatality rate of 0.82 fatality per 100 million VMT,¹⁹ which represents approximately 73 percent of the average overall fatality rate from 2009 through 2012. The agency applied this ratio to the most recent overall fatality rate of 1.34 fatalities per 100 million VMT to identify an estimated light-duty vehicle fatality rate of 0.98 fatalities per 100 million VMT. Multiplying this fatality

rate by 14 percent yields an estimated fatality rate for front-seat occupants 13 years of age or older of 0.14 fatality per 100 million VMT.

Studies indicate the effectiveness of frontal air bags in reducing fatalities for front-seat occupants to be 12 percent for passenger cars and 14 percent for light trucks and vans (LTVs).²⁰ Thus, traveling with an inactivated frontal air bag is estimated to be $1/(1-0.12)$, or 13.6 percent, riskier in passenger cars ($1/(1-0.14)$, or 16.3 percent, riskier in LTVs). Assuming a light-duty vehicle sales split of one-third passenger cars and two-thirds LTVs for the vehicles affected by the proposed rule (which reflects recent vehicle sales splits), the average increase of risk of traveling in the front seat with an improperly deactivated frontal air bag is estimated to be 15.4 percent. NHTSA assumed a 10.3 percent misuse rate for air bag on-off switches when adults travel in the front passenger seat. Multiplying this misuse rate by the estimated 15.4 percent increase in risk when on-off switches

are misused yields an estimate of incremental risk of 1.6 percent for front-seat passengers 13 years of age or older in the presence of air bag on-off switches. In turn, multiplying the estimated incremental risk by the fatality rate for front-seat passengers 13 years of age or older (0.14 fatality per 100 million VMT) yields an estimate of incremental fatality risk for these passengers in the presence of an air bag on-off switch equal to 0.0022 fatality per 100 million VMT.

For the *Enforcement Discretion baseline*, the agency estimated expected per-vehicle annual VMT (*i.e.*, expected VMT taking scrappage into account) by multiplying the average of the passenger car and LTV VMT schedules used in the analysis supporting the Corporate Average Fuel Economy Rulemaking by their corresponding vehicle survival schedules. Applying three-percent- and seven-percent discount rates yields estimates of discounted lifetime vehicle VMT equal to 13.0 times and 9.7 times the first-year VMT.

TABLE 3—VMT SCHEDULE AND ESTIMATED DISCOUNTED VEHICLE VMT (FOR SELECTED VEHICLE AGES)

Vehicle age	Annual VMT for surviving vehicles	Survival rate × 3% discount factor	Survival rate × 7% discount factor	Annual exposure (3% discount rate)	Annual exposure (7% discount rate)
1	17,040	1.000	1.000	17,040	17,040
5	14,641	0.853	0.732	14,535	12,480
10	12,310	0.636	0.452	10,843	7,696
15	10,546	0.377	0.221	6,421	3,766
20	9,165	0.178	0.086	3,036	1,472
25	7,981	0.087	0.035	1,477	592
30	6,805	0.049	0.016	831	275
35	5,454	0.017	0.005	294	81
Total/Year 1 .....	.....	.....	.....	13.0	9.7

The monetized (undiscounted) value of the per-vehicle safety benefit in the first year of vehicle use in this category is estimated to be \$13.12 (0.0022 mitigated fatality per 100 million VMT × 17,040/100 million VMT × \$35.4 million per mitigated fatality²¹). Thus, at a three-percent discount rate, the estimated lifetime per-vehicle safety benefit is estimated to be approximately \$171 ($\$13.12 \times 13.0 = \$170.58$) under the *Enforcement Discretion* baseline. At a seven-percent discount rate, the estimated lifetime per-vehicle safety benefit is estimated to be approximately

\$127 ($\$13.12 \times 9.7 = \$127.28$) under the *Enforcement Discretion* baseline.

For the *Enforcement Non-Discretion* baseline, the above approach is used, with one key change: per-vehicle safety benefits are estimated as the above per-vehicle safety benefits multiplied by the share of total lifetime discounted VMT comprised of pre-MY 2016 vehicles. In turn, the share of total lifetime discounted VMT comprised of pre-MY 2016 vehicles is estimated as the sum of estimated discounted lifetime VMT for MY 2004 through 2015 vehicles, divided by the sum of estimated discounted lifetime VMT for MY 2004

through MY 2021 vehicles. Using this approach, the estimated per-vehicle safety benefits are 67 percent lower than in the other baseline at a three-percent discount rate ($0.33 \times \$170.58$, or \$56.29). The corresponding estimate at a seven-percent rate is 72 percent lower than in the other baseline ($0.28 \times \$170.58$, or \$34.37).

The total annual safety benefit in this category under the proposed rule is equal to the per-vehicle safety benefit multiplied by the number of affected vehicles. Thus, at a three-percent discount rate, the total annual safety benefit is estimated to be \$9,893.80

¹⁹ Kahane, C. J. (2015, January). Lives saved by vehicle safety technologies and associated Federal Motor Vehicle Safety Standards, 1960 to 2012—Passenger cars and LTVs—With reviews of 26 FMVSS and the effectiveness of their associated safety technologies in reducing fatalities, injuries, and crashes. (Report No. DOT HS 812 069).

Washington, DC: National Highway Traffic Safety Administration.

²⁰ Ibid.

²¹ The total estimated safety value per mitigated fatality is equal to a base value per fatality (\$12.8 million in 2022 dollars) adjusted by factors

accounting for: (1) the share of comprehensive economic costs of crashes comprised of fatalities; and (2) the relative rate of front right seat occupation in non-fatal versus fatal crashes. This calculation is presented in more detail in the docketed accompanying economic analysis.

under the *Enforcement Discretion* baseline (\$170.58 per request $\times$ 58 requests per year). At a seven-percent discount rate, the total annual safety benefit is estimated to be \$7,382.30 under the *Enforcement Discretion* baseline (\$127.58 per request $\times$ 58 requests per year). The total annual safety benefit under the *Enforcement Non-Discretion* baseline is \$1,925.20 at a three-percent discount rate (\$56.29 $\times$ 34.2 = \$1,925.20) and \$1,175.31 at a seven-percent discount rate (\$34.37 $\times$ 34.2 = \$1,175.31).

Air Bag Deactivation. The proposed rule will formalize and modify the process by which vehicle owners or users can obtain an exemption from the “make inoperative” provision for an air bag deactivation. The proposed rule will have a cost impact for requestors of air bag deactivation exemptions and business entities that deactivate air bags. For this analysis, the agency assumed that annual deactivation requests will be

equal to the 2015–2017 annual average of deactivation requests under the proposed rule (seven per year). The agency felt there was no need to run a two-pronged analysis like it did for the on-off switch analysis because there was no change in the way the agency processed air bag deactivation requests; there has never been a formal process for requesting deactivation, and NHTSA has used its enforcement discretion to grant deactivations since the agency started doing so in the mid-1990s. Furthermore, because the agency is simply formalizing a process that is unlikely to result in a noticeable impact on the number of deactivation requests received, granted, or denied, NHTSA does not believe there will be a safety impact for this part of the proposed rule.

Individuals requesting air bag deactivation exemptions under the status quo incur costs associated with preparing the request letter, acquiring supporting documentation, and having

the deactivation performed. Under the status quo, a deactivation requestor must write a letter to NHTSA that includes information about the requestor’s vehicle and the requestor’s reason for requesting an air bag deactivation.

The cost of deactivating an air bag system is unaffected by the proposed rule, meaning the proposed rule would have no impact on the costs associated with deactivation. Furthermore, the proposed rule does not include any additional requirements for businesses performing air bag deactivations, meaning the proposed rule would also have no impact on the costs businesses incur by performing deactivations.

Table 4 below estimates the costs associated with the proposed amendments to the air bag deactivation process (see the docketed economic analysis for this proposed rule for details).

TABLE 4—ESTIMATED ANNUAL COST IMPACTS FOR AIR BAG DEACTIVATION REQUESTS
[2022 Dollars]

Cost item (entity)	Status quo cost	Cost under proposed rule	Net cost impact
Requests (Applicants)	\$160.72	\$186.69	\$25.97
Deactivation (Applicants)	542.50	542.50	0.00
Distributing Forms and Labels, and Data Processing (Government)	61.81	61.81	0.00
Return Form and Labels (Industry)	18.90	18.90	0.00
Safety (Occupants)	N/A	N/A	0.00
Total	722.12	748.09	25.97

V. Proposed Effective Date

We propose that the amendments in this rulemaking become effective immediately after publication of a final rule in the **Federal Register**. The proposed amendments would not markedly impact the current process or requestors’ ability to get approval for an air bag on-off switch or deactivation except regarding forward-facing children ages 1 to 12, children in forward-facing CRSs, and children in rear-facing CRSs in vehicles equipped with suppression-based advanced air bag systems. Because this final rule would have no impact on the public and only changes NHTSA processes, the agency does not believe that any lead time is necessary for this potential final rule. Comments are requested on this proposed effective date.

VI. Regulatory Notices and Analyses

Executive Order 12866, Executive Order 14904, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the potential impact of this proposed rule under Executive Order 12866, Executive Order 14094, Executive Order 13563, DOT Order 2100.6A and the Department of Transportation’s regulatory policies and procedures. This NPRM is not considered to be significant under the Department of Transportation’s regulatory policies and procedures.²²

This document proposes several changes to part 595 subpart B but does not impose any new costs. It proposes the elimination of the sunset date of an existing exemption for retrofit on-off switches for frontal air bags, slight narrowing of the eligibility requirement for obtaining that exemption going forward, and the codification of existing processes for obtaining retrofit air bag on-off switches for emergency vehicles

and air bag deactivations for all vehicles. It also proposes changes to the information brochure contained in appendix A. The agency notes that part 595 subpart B does not require a motor vehicle manufacturer, dealer, or repair business to take any action or bear any costs except in instances in which a dealer or repair business voluntarily agrees to deactivate or install an air bag on-off switch for an air bag. For consumers, the purchase and installation of a retrofit air bag on-off switch or the deactivation a vehicle’s frontal air bag is permissive, not prescriptive.

When an eligible consumer obtains the agency’s authorization for the installation of a retrofit air bag on-off switch or air bag deactivation and enlists a dealer or repair business to modify their vehicle accordingly, there will be costs associated with that action. However, these are costs that the consumer chooses to bear if they want an air bag on-off switch or air bag

²² 44 FR 11034 (Feb. 26, 1979).

deactivation, they are not costs prescribed by NHTSA's regulation.

Moreover, the agency notes that the amendments to part 595 that are proposed here would either only slightly amend existing processes for vehicle owners to request a make inoperative exemption or would codify longstanding procedures relating to requests for deactivations. Given that these proposed changes would not substantially change the process by which vehicle owners currently obtain make inoperative exemptions for retrofit air bag on-off switches and deactivations, and the fact that these changes will affect a relatively small number of vehicles, there are virtually no new costs imposed by this rulemaking. A detailed description of the costs and benefits can be found above. Furthermore, the agency prepared an economic analysis for this proposed rule, which can be found in the docket for this NPRM.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking, 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 governmental jurisdictions) unless the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." 13 CFR part 121.105(a). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

I certify that the changes proposed in this NPRM would not have a significant economic impact on a substantial number of small entities. The amendments proposed in this NPRM eliminate the sunset provision in Subpart B of part 595, make some relatively minor changes to on-off switch eligibility that only affect a small number of vehicles, and codify existing agency practices regarding treatment of law enforcement and emergency vehicles and air bag deactivations.

This NPRM does not propose any changes that would significantly affect small entities. Small organizations and small governmental units would not be significantly affected by the proposed amendments of this NPRM since the potential cost impacts associated with this action are negligible.

Executive Order 13132 (Federalism)

NHTSA has examined this proposed rule pursuant to Executive Order (E.O.) 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This proposed rule would 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."

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision stating that, if NHTSA has established a standard for an aspect of motor vehicle or motor vehicle equipment performance a State may only prescribe or continue in effect a standard for that same aspect of performance if the State standard is identical to the Federal standard. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law." 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

NHTSA rules can also preempt State law if complying with the FMVSS would render the motor vehicle manufacturers liable under State tort law. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle

manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to E.O. 13132, NHTSA has considered whether this proposed rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (*e.g.*, the language and structure of the regulatory text) and objectives of this proposed rule and finds that this NPRM, like many NHTSA rules, prescribes only a minimum safety standard.

Accordingly, NHTSA does not intend that this proposed rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by this proposed rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard finalized in this document. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations, and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rulemaking proposes changes to the existing information collection requirements under 49 CFR part 595.5, "Retrofit On-Off Switches for Air Bags."

In compliance with the requirements of the PRA, NHTSA intends to request approval for a reinstatement with modification of a previously approved information collection request. Specifically, NHTSA is requesting reinstatement of the information collection request (ICR) with OMB Control No. 2127-0588. This ICR corresponds to appendix B to part 595, which is a form that any owner or lessee of a motor vehicle seeking the installation of an air bag on-off switch must complete and submit to NHTSA before NHTSA will grant or deny

approval for an on-off switch to be installed. Additionally, NHTSA plans to request that the previously approved ICR be modified in accordance with the proposals discussed in this NPRM. As discussed in the sections above, this NPRM proposes to amend several of the appendices in part 595, and proposes adding an additional appendix to part 595, which means the burden on the public may be different from the originally approved ICR.

As part of seeking approval to reinstate the ICR with OMB, NHTSA will separately publish a notice giving the public the opportunity to comment on the reinstatement and modification of the ICR. Those notices will provide significant detail on the ICR reinstatement, and on how the ICR will be modified based on the proposals discussed in this proposed rule.

National Environmental Policy Act (NEPA)

NHTSA has analyzed this NPRM for the purposes of the National Environmental Policy Act (NEPA). The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Unfunded Mandates Reform Act (UMRA)

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation, with base year of 1995). UMRA also requires an agency issuing an NPRM or final rule subject to the Act to select the “least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.” This NPRM would not result in a Federal mandate that will likely result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation, with base year of 1995).

Executive Order 12778 (Civil Justice Reform)

When promulgating a regulation, agencies are required under E.O. 12988 to make every reasonable effort to ensure that the regulation, as appropriate: (1) specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation,

including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this NPRM is discussed above. NHTSA notes further that there is no requirement that an individual submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization and the Society of Automotive Engineers. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this proposed rule.

Plain Language Requirement

E.O. 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public’s needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn’t clear?
- Would a different format (grouping and order of sections, use of headings,

paragraphing) make the rule easier to understand?

- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

NHTSA has considered these questions and attempted to use plain language in promulgating this proposed rule. If readers have suggestions on how we can improve our use of plain language, please write us.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading at the beginning of this notice may be used to find this action in the Unified Agenda.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.transportation.gov/privacy. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

VII. Public Participation

How do I prepare and submit comments?

- To ensure that your comments are correctly filed in the Docket, please include the Docket Number in your comments.
- Your comments must not be more than 15 pages long. NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments, and there is no limit on the length of the attachments.
- If you are submitting comments electronically as a PDF (Adobe) file,

NHTSA asks that the documents be submitted using the Optical Character Recognition process, thus allowing NHTSA to search and copy certain portions of your submissions.

- Please note that pursuant to the Data Quality Act, for substantive data to be relied on and used by NHTSA, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, NHTSA encourages you to consult the guidelines in preparing your comments. DOT's guidelines may be accessed at <https://www.transportation.gov/regulations/dot-information-dissemination-quality-guidelines>.

Tips for Preparing Your Comments

When submitting comments, please remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions you make and provide any technical information and/or data that you used.
- 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, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- To ensure that your comments are considered by the agency, make sure to submit them by the comment period deadline identified in the **DATES** section above.
- For additional guidance on submitting effective comments, see https://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit your complete

submission, including the information you claim to be confidential business information (CBI), to the NHTSA Chief Counsel. When you send a comment containing CBI, you should include a cover letter setting forth the information specified in our CBI regulation (49 CFR part 572). In addition, you should submit a copy from which you have deleted the claimed CBI to the Docket by one of the methods set forth above.

To facilitate social distancing due to COVID-19, NHTSA is treating electronic submission as an acceptable method for submitting CBI to the Agency under 49 CFR part 512. Any CBI submissions sent via email should be sent to an attorney in the Office of Chief Counsel at the address given above under **FOR FURTHER INFORMATION CONTACT**.

Will the agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to <https://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material. You can arrange with the docket to be notified when others file comments in the docket. See www.regulations.gov for more information.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

List of Subjects in 49 CFR Part 595

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA is proposing to amend 49 CFR part 595 as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

- 1. The authority citation for part 595 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.95.

- 2. Amend § 595.4 by adding in alphabetical order definitions for “Deactivation”, “Emergency vehicle”, and “On-off switch” to read as follows:

§ 595.4 Definitions.

* * * * *

Deactivation means that a dealer or motor vehicle repair business disables an air bag system in a motor vehicle.

* * * * *

Emergency vehicle means law enforcement vehicles, as that term is defined in S7 of § 571.208 of this chapter, firefighting vehicles, and ambulances, as that term is defined in S3 of § 571.201 of this chapter.

* * * * *

On-off switch means a switch that allows an occupant to turn an air bag in the vehicle on or off.

* * * * *

- 3. Revise the heading to Subpart B to read as follows:

Subpart B—Retrofit On-Off Switches for Air Bags and Air Bag Deactivations

- 4. Revise § 595.5 to read as follows:

§ 595.5 Requirements.

(a) *Overview of general conditions for a vehicle owner or lessee to obtain approval to install a retrofit air bag on-off switch.* For installing a retrofit air bag on-off switch on vehicles other than an emergency vehicle, prior to the installation of the retrofit air bag on-off switch either the owner or lessee of the motor vehicle reads the information brochure in appendix A to this part and submits the completed form in appendix B to this part to the National Highway Traffic Safety Administration (NHTSA) in accordance with the instructions on the form. For emergency vehicles, the authorized representative of the owner or lessee of the emergency vehicle submits the completed form in appendix D to this part to NHTSA in accordance with the instructions on the form. NHTSA will consider whether the request is consistent with motor vehicle safety and the purpose and policies of the National Traffic and Motor Vehicle Safety Act. If NHTSA agrees to the request, NHTSA sends a letter to the

requestor authorizing the installation of an on-off switch in that vehicle for that air bag.

(b) *Requirements for dealer or motor vehicle repair businesses when installing retrofit on-off switches for air bags.* A dealer or motor vehicle repair business may modify a motor vehicle by installing an on-off switch subject to the conditions in paragraphs (b)(1) through (5) of this section.

(1) The dealer or motor vehicle repair business receives from the owner or lessee of the motor vehicle a letter from the National Highway Traffic Safety Administration that authorizes the installation of an on-off switch in that vehicle for that air bag.

(2) The dealer or motor vehicle repair business installs the on-off switch in accordance with the instructions of the manufacturer of the switch.

(3) The on-off switch meets all of the conditions specified in paragraphs (b)(3)(i) and (ii) of this section.

(i) The on-off switch is operable solely by a key or a key-like object. The on-off switch shall be separate from the ignition switch for the vehicle, so that the driver must take some action other than inserting the ignition key or turning the ignition key in the ignition switch to turn off the air bag. Once turned off, the air bag shall remain off until it is turned back on by means of the device. If a single on-off switch is installed for more than one air bag in the vehicle, the on-off switch shall allow each air bag to be turned off without turning off the other air bag(s). The readiness indicator required by S4.5.2 of § 571.208 of this chapter shall continue to monitor the readiness of the air bags even when one or more air bags have been turned off. The readiness indicator light shall not be illuminated solely because an air bag has been deactivated by means of an on-off switch.

(ii) A telltale light in the interior of the vehicle shall be illuminated whenever an air bag is turned off by means of the on-off switch. The telltale for a driver air bag shall be clearly visible to an occupant of the driver's seating position. The telltale for a front passenger air bag shall be clearly visible to occupants of all front seating positions. The telltale for an air bag:

(A) Shall be yellow;

(B) Shall have the identifying words "DRIVER AIR BAG OFF", "PASSENGER AIR BAG OFF", or "PASS AIR BAG OFF", as appropriate,

on the telltale or within 25 millimeters of the telltale;

(C) Shall remain illuminated for the entire time that the air bag is "off";

(D) Shall not be illuminated at any time when the air bag is "on"; and,

(E) Shall not be combined with the readiness indicator required by S4.5.2 of § 571.208 of this chapter.

(4) The dealer or motor vehicle repair business provides the owner or lessee with an insert for the vehicle owner's manual that—

(i) Describes the operation of the on-off switch;

(ii) Lists the risk groups on the request form set forth in appendix B to this part;

(iii) States that an on-off switch should only be used to turn off an air bag for a member of one of those risk groups; and

(iv) States the safety consequences of using the on-off switch to turn off an air bag for persons who are not members of any of those risk groups. The description of those consequences includes information, specific to the make, model, and model year of the affected vehicle, about any seat belt energy managing features, *e.g.*, load limiters, that will affect seat belt performance when the air bag is turned off.

(5) In the form included in the agency authorization letter specified in paragraph (b)(1) of this section, Appendix C of this part, the dealer or motor vehicle repair business fills in information describing itself and the on-off switch installation(s) it makes in the motor vehicle. The dealer or motor vehicle repair business then sends the form to the National Highway Traffic Safety Administration within 7 working days after the completion of the described installations.

(c) *Overview of general conditions for a vehicle owner or lessee to obtain approval to deactivate an air bag.* (1) For air bag deactivations, prior to the deactivation of the air bag the owner or lessee of the vehicle submits a written request to NHTSA with the following information:

(i) The name and address of the vehicle owner or lessee;

(ii) A request that an air bag be deactivated and whether the request applies to the driver air bag, front passenger air bag, or both;

(iii) A certification that the owner or lessee has read the information brochure in appendix A to this part;

(iv) A detailed justification why deactivation is necessary and why the

installation of an on-off switch is not a viable option; and

(v) Any documentation that supports the stated justification; and a certification that if the deactivation is no longer justified or if they sell the vehicle, the owner or lessee would have the air bag reactivated or would inform the buyer that the air bag has been deactivated prior to the sale.

(2) The owner or lessee mails the request to the National Highway Traffic Safety Administration, Attention: Air Bag Deactivation Requests, 1200 New Jersey Avenue SE, Washington, DC 20590 or faxes the request to 202-493-2833. NHTSA will consider whether the request is consistent with motor vehicle safety and the purpose and policy of the National Traffic and Motor Vehicle Safety Act. If NHTSA agrees to the request, NHTSA sends a letter to the requestor authorizing the deactivation of the specified air bag in the vehicle, with labels to be affixed by the dealer or motor vehicle repair business to both sides of the sun visor at each seating position with a deactivated air bag, alerting vehicle users about the deactivated air bag(s).

(d) *Requirements for dealers or motor vehicle repair businesses when performing air bag deactivations.* A dealer or motor vehicle repair business may modify a motor vehicle by deactivating an air bag subject to the conditions in paragraphs (d)(1) through (3) of this section.

(1) Prior to the deactivation of the air bag, the dealer or motor vehicle repair business receives from the owner or lessee of the motor vehicle a letter from NHTSA that authorizes the deactivation of the specified air bag in the vehicle and labels to be affixed by the dealer or motor vehicle repair business to both sides of the sun visor at each seating position with a deactivated air bag, alerting vehicle users about the deactivated air bag(s).

(2) The dealer or motor vehicle repair business affixes the labels to both sides of the sun visor at each seating position with a deactivated air bag.

(3) If a deactivated air bag gets reactivated the dealer or motor vehicle repair business shall remove the labels indicating the air bag was deactivated.

■ 5. Revise Appendices A through C to read as follows:

BILLING CODE 4910-59-P

Appendix A to Part 595—Advanced Frontal Air Bags and Air Bag On-Off Switch Information Brochure

ADVANCED FRONTAL AIR BAGS AND AIR BAG ON-OFF SWITCH INFORMATION

U.S. Department of Transportation,
National Highway Traffic Safety Administration

INTRODUCTION

Consumers who are in certain risk groups have the option to have a frontal air bag on-off switch installed in their vehicle by a vehicle dealer or repair business. This brochure provides the facts you need to know about air bags and retrofit air bag on-off switches so you can make an informed decision about whether installing a switch is the correct choice for you.

NHTSA has studied the effectiveness of advanced frontal air bags and determined that they can significantly reduce the risk of crash-related injury and death for average-size and larger adults, and have also eliminated these risks to child passengers and small adults posed by earlier generation air bags.

When an advanced frontal air bag deploys in a crash, the most common airbag-related injuries include minor cuts, bruises, or abrasions. There have been no confirmed air-bag-related fatalities in vehicles equipped with advanced air bags, which began their introduction to the market with 2004 model year vehicles. Although advanced air bags give better protection to a wider range of occupants, NHTSA still recommends that front seat occupants maintain a 10-inch minimum distance between the frontal air bag cover or dashboard and their breastbone, and fasten their seat belts. Air bags are supplemental restraints and are designed to work best in combination with seat belts.

Most people can minimize the risk of serious air bag injury by making simple changes in behavior. Front seat adult passengers can sit a safe distance from the air bag. Shorter drivers can adjust their seating position to achieve a safe distance from the air bag. Infants and children under 13 years old should sit in the back seat whenever possible. And everyone can be properly restrained.

Those who may not be able to follow these recommendations may face an increased risk of serious air bag injury. The limited categories of at-risk people who may benefit from having the option to turn off their air bags include:

- Drivers who cannot maintain the recommended distance from the air bag cover;
- Drivers with a medical condition that increases the risk of a serious air bag injury;

- Individuals who must transport a child in a rear-facing car seat in the front seat with an active air bag;
- Individuals who must transport a forward-facing child in the front seat in a vehicle without advanced air bags; and
- Individuals who must transport a passenger who has a medical condition that a physician agrees increases the risk of a serious air bag injury in the front seat.

HOW AIR BAGS WORK

When there is a moderate to severe crash, a signal is sent from the air bag system's electronic control unit to the inflator within the air bag module. An igniter in the inflator starts a chemical reaction that produces a harmless gas, which inflates the air bag within the blink of an eye – or less than 1/20th of a second. Air bags have vents, so they deflate immediately after cushioning you. They cannot smother you and they don't restrict your movement.

Are all air bags the same?

No. Air bags differ in design and performance. Differences exist in the crash speeds that trigger air bag deployment, the speed and force of deployment, the size and shape of air bags, and the manner in which they unfold and inflate. That is why you should contact your vehicle manufacturer if you want specific information about the air bags in your car or truck.

ADVANCED FRONTAL AIR BAGS

What are advanced frontal air bags?

In advanced frontal air bag systems, the electronic control unit utilizes additional data input to determine with what level of power, or even if, the driver frontal air bag or passenger frontal air bag will inflate. Advanced air bag deployment determinations are based on the system's design and sensor inputs, which typically include: size or weight of an occupant, whether the occupant is wearing a seat belt, how far back the occupant's seat track is set, and the severity of the crash.

Why do we need advanced frontal air bags?

Advanced frontal air bags were designed primarily to minimize the risk of air-bag-related injury or death to children and small-stature adults. In crashes where higher-powered air bag deployment would not be necessary and/or could cause injury, such as in a low-speed crash or in a crash where the occupant is leaning out of position, the system reduces the risk of an air bag injury by either: (1) shutting off (suppressing) the frontal air bag, or (2) deploying the frontal air bag in a low-risk manner (less than 100% of full force deployment).

Do all new vehicles come with advanced frontal air bags?

Yes. All passenger cars and light trucks (including pickup trucks, SUVs and vans) with a gross vehicle weight rating (GVWR) of 8,500 pounds or less, and an unloaded vehicle weight of 5,500 pounds or less, produced after September 1, 2006, have advanced frontal air bags. The GVWR is the weight of the empty vehicle plus the maximum weight of cargo and passengers that can be safely loaded in the vehicle, as specified by the manufacturer. Some vehicles produced between September 1, 2003, and September 1, 2006, will also have advanced frontal air bags. You will know if your vehicle has advanced frontal air bags if the air bag warning label on the sun visor begins with the phrase "EVEN WITH ADVANCED AIR BAGS."

How does sensor technology classify the type of occupant?

Most occupant classification systems in use today classify the occupant based upon weight, which is typically determined using pressure sensors in the seat cushion. Other technologies utilize pattern recognition of the pressure profile on the seat bottom. Still more sophisticated systems could potentially be utilized, such as optical, infrared, ultrasonic or electric field sensors to classify the occupant type. You can check your owner's manual or contact your vehicle's manufacturer to determine what type of occupant classification technology you may have in your vehicle.

Have advanced air bag systems been tested on child-size dummies?

Yes. Federal Motor Vehicle Safety Standard (FMVSS) No. 208, which specifies the requirements for advanced air bag systems, requires that all light vehicles (passenger cars and light duty trucks) must meet specific safety performance criteria for dummies representing 12-month-old infants, 3-year-old toddlers, 6-year-old children, and small-stature females. For those manufacturers electing to provide a lower-powered air bag deployment to a child or small female occupant in certain low-speed crashes, the advanced frontal air bag must meet specific safety injury criteria as set forth in FMVSS No. 208. For those manufacturers electing to suppress (not deploy) a passenger air bag for an infant or child occupant in all crashes, their advanced frontal air bag systems must detect child-size dummies, representing infants in car seats and small children in and out of car seats, and be suppressed when tested with those dummies.

How do I know if my child in a rear-facing car seat is in front of an active air bag? (Note: NHTSA recommends against placing a child in a rear-facing car seat in front of an active passenger air bag.)

Parents and caregivers should verify the air bag status for every child and rear-facing car seat combination. If your vehicle is equipped with advanced frontal air bags (the vehicle has a warning label on the sun visor with the phrase "EVEN WITH ADVANCED AIR BAGS") and if the vehicle uses an automatic air bag suppression system, then it will suppress the air bag for infants and/or children and provide a light that indicates the air bag is off. For a vehicle with a suppression system, if your child in a rear-facing car seat does not activate the light indicating

the air bag is off, then the air bag is active. If the vehicle is equipped with advanced frontal air bags, but does not have a light indicating the air bag suppression status, then the air bag is active, but it is designed to deploy in a low risk manner in low-to-moderate speed crashes for children. If your vehicle is not equipped with advanced frontal air bags (the vehicle does not have a warning label on the sun visor with the phrase “EVEN WITH ADVANCED AIR BAGS”), and a child in a rear-facing car seat is placed in the front passenger seat, the air bag will be active and the child will be at risk from the full force of the air bag deployment. Parents or caregivers may benefit from having a retrofit switch installed to turn off the air bag if the child in a rear-facing car seat must be transported in the front passenger seat in front of an active air bag.

I just bought a vehicle with advanced frontal air bags. Does this mean I can start putting my kids in the front seat again?

No. Please keep in mind that placing a child in the front seat, no matter what the circumstances, comes with increased risk. NHTSA recommends that all children under 13 years old ride in the rear seat in the right car seat. Select a car seat based on your child’s age and size, and choose a seat that fits in your vehicle and use it every time.

Do I still need to maintain 10 inches between the air bag cover and my breastbone?

Yes. To minimize the potential of any air-bag-related injury, NHTSA still recommends maintaining a 10-inch minimum distance between the frontal air bag cover and the driver’s breastbone. This can be done by keeping a proper seating position and by moving the seat as far back as possible.

AIR BAG ON-OFF SWITCHES

What does an air bag on-off switch do?

When an on-off switch is turned to the off position, it deactivates the air bag system and the air bag will not deploy in a crash of any severity. When an on-off switch is turned on, the system will function normally, i.e., it may deploy in a crash depending on the crash severity. For vehicles with advanced frontal air bags, a switch turned on will allow the system to activate its advanced functions, which could mean shutting off the air bag for smaller passengers (see Advanced Frontal Air Bag section below). The on-off switch can be installed for the driver, passenger, or both. To limit misuse, a key must be used to operate the on-off switch. When the air bag is turned off, a light comes on. There is a message on or near the light saying “DRIVER AIR BAG OFF,” “PASSENGER AIR BAG OFF,” or “PASS AIR BAG OFF.” The air bag will remain off until the key is used to turn it back on. For vehicles with advanced frontal air bags, there may be another air bag status light. This status light will operate independently of the air bag switch status, based on input from the occupant detection technology in that seat. Drivers should rely on the air bag switch status to determine if the air bag has been switched off.

What steps can you take to reduce air bag risk without buying an on-off switch?

- Children in rear-facing car seats should never ride in front of an active passenger air bag.
- Transport children under 13 years old in the back seat and use the correct restraint for their weight and height.
- Always buckle your seat belt.
- Keep 10 inches between the center of the frontal air bag cover or dashboard, and your breastbone.

The majority of people don't need an on-off switch. Almost everyone is safer with air bags than without them. In fact, in advanced air bag vehicles, all people (including children 1 to 12 years old) who are properly restrained and who can sit far enough back from their advanced frontal air bag are safer. Ideally, you should sit with at least 10 inches between the center of your breastbone and the cover of your air bag or dashboard. The farther back you can move, the lower your risk of being injured by the deploying air bag.

REDUCING THE RISK**What is the safest way to ride in front of a frontal air bag?**

First, move the seat as far back as possible and buckle up – every trip, every time. The lap belt needs to fit over your hips – not your abdomen, and the shoulder belt should lie on your chest and over your shoulder, not across the neck or face. Remove any slack from the belt. In a crash, seat belts stretch and slow down your movement toward the steering wheel or dashboard. Moving back and properly using seat belts give the frontal air bag a chance to inflate in a crash before you make contact with the air bag.

How do I best protect children in my vehicle?

NHTSA recommends that all children under 13 years old ride in the rear seat in the appropriate child restraint system. Children are safer in the rear seat. However, when children must sit in the front, because the vehicle has no rear seat, there are too many children for all to ride in back, or a child has a medical condition that requires monitoring, they should use the seat belt and/or car seat appropriate for their age, weight and height (see the recommendations at the end of this brochure) and avoid leaning forward. The vehicle seat should be moved as far back from the air bag as practical. Make sure the child's shoulder belt is positioned properly or the car seat harness is properly adjusted. If adult seat belts do not fit properly, use a booster seat. NHTSA also recommends consulting your vehicle's owner's manual for their recommendations on transporting children in the front passenger seat. Also, children should never ride on the laps of others or share a seat belt with another person.

What should teenagers and adults do to be safest on the passenger side?

Always wear seat belts. This reduces the distance that they can move forward during a crash. Move the seat back as far as practical. The distance between a passenger's chest and the dashboard where the air bag is stored is usually more than 10 inches, even with the passenger seat all the way forward.

Who should consider installing an on-off switch?

- People who must transport children riding in rear-facing car seats in the front passenger seat of a vehicle with an active frontal air bag due to a medical condition or the lack of an available rear seat
- People who must transport forward-facing children (under 13 years old) in the front passenger seat due to a medical condition or the lack of an available rear seat in a vehicle without advanced frontal air bags
- Drivers who cannot change their customary driving position and keep 10 inches between the air bag cover and the center of their breastbone
- People (including children) who must ride in the driver or front passenger seat and whose doctors say that, due to their medical condition, the air bag poses a special risk that outweighs the risk of hitting their head, neck or chest in a crash if the frontal air bag is turned off

If you cannot certify that you or any user of your vehicle is in one of these groups, you are not eligible for an on-off switch. If you are not in one of these groups, turning off your air bag will increase the risk of striking the steering wheel or dashboard in a moderate to severe crash. Keep in mind that for some vehicles with advanced air bags, the air bag will automatically turn off for some children and small stature adults, and a light indicating that the air bag is suppressed will illuminate. Check to see if this is the case since this could eliminate your need for a manual on-off switch.

THE ON-OFF SWITCH DECISION

Vehicle owners and lessees can obtain an on-off switch for one or both frontal air bags only if they can certify that they or a user of their vehicle are in one of the risk groups listed below.

- **Children in rear-facing car seats who must be transported in the front seat in front of an active air bag.** A rear-facing car seat should never be placed in the path of an active front passenger air bag; therefore, in a vehicle without advanced air bags, parents and caregivers of children in rear-facing car seats that must be transported in the front passenger seat can opt to have a retrofit on-off switch installed. For a front passenger advanced air bag that provides a telltale light indicating the air bag suppression status, if your child in a rear-facing car seat does not activate the light indicating the air bag is off, then the air bag is active. If the advanced front passenger air bag does not provide a light indicating the air bag suppression status, then the air bag is active, but it is

designed to deploy in a low-risk manner. These parents and caregivers that must transport children in rear-facing car seats in front of active advanced air bags can also opt to have a retrofit on-off switch installed to turn off the front passenger air bag.

- **Drivers who cannot sit 10 inches away from the air bag.** If, despite your best efforts, you cannot sit 10 inches from the air bag, you may wish to consult your dealer or vehicle manufacturer for advice or modifications to help you move back or consider requesting an on-off switch.
- **Drivers or passengers with certain medical conditions.** These are people (including child front passengers) who have been advised by a physician that, due to a medical condition, they may benefit from turning off their air bag because an air bag deployment poses greater injury risk to them than that of hitting their head, neck or chest in a crash if the frontal air bag is turned off. Without an air bag, even a belted occupant could hit their head, neck or chest in a crash.
 - A national conference of physicians considered all medical conditions commonly cited as possible justifications for turning off air bags. The physicians did NOT recommend turning off air bags for people with pacemakers, supplemental oxygen, eyeglasses, median sternotomy, angina, chronic obstructive pulmonary disease, emphysema, asthma, breast reconstruction, mastectomy, scoliosis (if the person can be positioned properly), previous back or neck surgery, previous facial reconstructive surgery or facial injury, hyperacusis, tinnitus, advanced age, osteogenesis imperfecta, osteoporosis and arthritis (if the person can sit a safe distance from the frontal air bag), previous ophthalmologic surgery, Down syndrome and atlantoaxial instability (if the person can reliably sit properly aligned), or pregnancy.
 - The physicians recommended turning off an air bag if a safe sitting distance or position cannot be maintained by a driver because of scoliosis or achondroplasia, or by a passenger because of scoliosis or Down syndrome and atlantoaxial instability. The physicians also noted that a passenger frontal air bag might have to be turned off if an infant or child has a medical condition and must ride in front so that he or she can be monitored. To obtain a copy of the recommendations, call the NHTSA Vehicle Safety Hotline (888-327-4236) or visit the NHTSA website: www.nhtsa.gov/equipment/air-bags#the-topic-on-off-switch.
- **Forward-facing children who must be transported in the front passenger seat in a vehicle without advanced air bags.** Children under 13 years old should be transported in the back seat whenever possible. Children under 13 years old who must be transported in the front passenger seat should be properly restrained with the seat moved as far back as possible, and they should not lean forward. The vast majority of all fatally injured children in a vehicle without advanced air bags were completely unrestrained. If children sit or lean forward, they may slip out of their shoulder belts, which puts them at risk. If a vehicle owner or lessee must transport a child in the front seat of a vehicle

Since the air bag will not automatically turn itself back on after you turn it off with an on-off switch, you must remember to turn it on when someone who is not at risk is sitting in that seat. Every on-off switch has a light to remind you when the air bag is turned off.

If I turn off my air bag, will my seat belts provide enough protection?

Air bags increase the protection provided by seat belts alone. If the air bag is turned off, you lose this extra protection.

In some newer vehicles, turning off your air bag may have additional consequences. These vehicles have seat belts that were specially designed to work together with air bags. If the crash forces become too great, these seat belts have pretensioners and load limiters that are designed to make seat belts more effective. Pretensioners retract the seat belt to remove excess slack almost instantly upon sensing the vehicle has crashed. Load limiters allow the belt to “give” or yield when forces on the belt rise above a safe level. Most, if not all, new cars and light trucks sold in the United States have been equipped with pretensioners and load limiters in the driver’s and right-front passenger’s seats. The air bag prevents you from moving too far forward after the seat belts yield. Without the air bag to cushion this forward movement, the chance of the occupant hitting the vehicle interior is increased.

What Restraint Is Right for Your Child?

Birth - 12 months



Your child under age 1 should always ride in a rear-facing car seat.

There are different types of rear-facing car seats: Infant-only seats can only be used rear-facing. Convertible and 3-in-1 car seats typically have higher height and weight limits for the rear-facing position, allowing you to keep your child rear-facing for a longer period of time.

1 - 3 years



Keep your child rear-facing as long as possible. It’s the best way to keep your child safe. Your child should remain in a rear-facing car seat until he or she reaches the top height or weight limit allowed by your car seat’s manufacturer. Once your child outgrows the rear-facing car seat, your child is ready to travel in a forward-facing car seat with a harness.

4 - 7 years



Keep your child in a forward-facing car seat with a harness until he or she reaches the top height or weight limit allowed by your car seat’s manufacturer. Once your child outgrows the forward-facing car seat with a harness, it’s time to travel in a booster seat, but still in the back seat.

8 - 12 years



Keep your child in a booster seat until he or she is big enough to fit in a seat belt properly. For a seat belt to fit properly the lap belt must lie snugly across the upper thighs, not the stomach. The shoulder belt should lie snug across the shoulder and chest and not cross the neck or face. Remember: your child should still ride in the back seat because it’s safer there.

CAUTION

Do not allow children to ride in the front seat while unrestrained or improperly restrained, or on your lap. **This puts them at serious risk, with or without an air bag.** Turning off the air bag is not the solution. It would eliminate air bag risk, but in a crash an unrestrained child could fly through the air and strike the dashboard or windshield, be completely ejected from the vehicle or be crushed by your body.

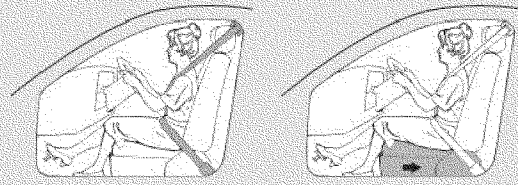
BUCKLING UP AND GETTING INTO THE CORRECT POSITION

How do I stay safe when I'm driving?

For vehicles without advanced air bags, the risk zone for driver air bags is the first 2-3 inches of inflation. In order to mitigate air bag injury risk to drivers, advanced air bags are tested in out of position scenarios by placing the dummies in close proximity of the air bag. Despite these improvements to air bags, the agency continues to recommend that drivers should place themselves at least 10 inches from the driver air bag to provide a clear margin of safety. This distance is measured from the center of the air bag cover to your breastbone. If you now sit less than 10 inches away, you can change your driving position in several ways:

- Move your seat to the rear as far as you can while still reaching the pedals comfortably. Some vehicles offer power-adjustable foot pedals.
- Slightly recline the back of the seat. Although vehicle designs vary, many drivers can achieve the 10-inch distance, even with the driver seat all the way forward, simply by reclining the back of the seat somewhat. If reclining the back of your seat makes it hard to see the road, raise yourself by using a firm, non-slippery cushion, or raise the seat if your vehicle has that feature.
- If your steering wheel is adjustable, tilt it downward. This points the air bag toward your chest instead of your head and neck.

Remember to:



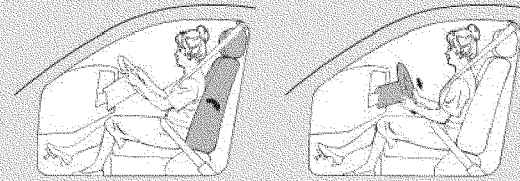
Use Seat Belts

Move Seat Rearward

Will following these safety tips guarantee that I will be safe in a crash?

There is no guarantee of safety in a crash, with or without an air bag, but wearing your seat belt at all times offers the best protection.

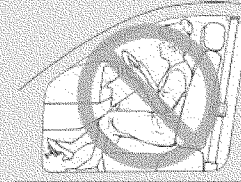
Remember to:



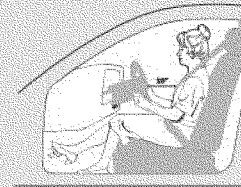
Recline Back of Seat

Tilt Wheel Down

Wrong: Unbelted and too close



Correct: Belted and 10 inches or more away



159746-973024-05

Appendix B to Part 595—Request Form for Frontal Air Bag On-Off Switch



Appendix B to Part 595 Request for Frontal Air Bag On-Off Switch

OMB No. 2127-0588

Vehicle Owner or Lessee Instructions: Read the National Highway Traffic Safety Administration (NHTSA) information brochure, *Advanced Frontal Air Bags & Air Bag On-Off Switch Information*. If you want authorization for your driver air bag, passenger air bag, or both, fill out Parts A, B, E, and F completely; fill out Parts C and D as appropriate, and send this form to:

National Highway Traffic Safety Administration
Attention: Derrick Lewis (NIO-120)
1200 New Jersey Avenue SE
Washington, DC 20590-1000

For faster response, fax to 202-493-2833
or email derrick.lewis@dot.gov.

- Please print.
- Incomplete forms will be returned to the owner or lessee.
- If you need a copy of the brochure or have any questions about how to fill out this form, call the NHTSA Hotline at 888-327-4236.

Part A. Name and Contact Information	Email	Phone		
First	Middle	Last		
Street Address (Residence)		City	State	ZIP Code

Part B. I own or lease the following vehicle (owners of multiple vehicles should consult the additional instructions at the end of this form):

Make	Model and Trim	Vehicle Identification Number (located on driver's side of dashboard near windshield and on certification label on driver's door frame)															
Model Year	Date of Mfr.																

Part C. Switch for Driver Air Bag

I request authorization for the installation of an on-off switch for the driver air bag in my vehicle. I certify that I or another driver of my vehicle meets the criteria for the risk group checked below. (At least one box must be checked.)

☐	Medical condition. The driver has a medical condition which, according to his or her physician: • Causes the driver air bag to pose a special risk for the driver; and • Makes the potential harm from the driver air bag in a crash greater than the potential harm from turning off that air bag and allowing the driver, even if belted, to hit the steering wheel, dashboard, or windshield in a crash.
☐	Distance from driver air bag. Despite taking all reasonable steps to move back from the driver air bag, the driver is not able to maintain a 10-inch distance from the center of his or her breastbone to the center of the driver air bag cover.

HS Form 603

NRM-240718-001

continued →

Part D. Switch for Passenger Air Bag

I request authorization for the installation of an on-off switch for the passenger air bag in my vehicle. I certify that I or another passenger in my vehicle meets the criteria for the risk group checked below. (At least one box must be checked.)

☐	Child in rear-facing car seat. I transport a child in a rear-facing car seat who must ride in the front seat in front of an active air bag (refer to the information brochure) because: • My vehicle has no rear seat; • My vehicle has a rear seat too small to accommodate a rear-facing car seat; or • The child has a medical condition which, according to the infant's physician, makes it necessary for the child to ride in the front seat so that the driver can constantly monitor the child's condition.
☐	Forward-facing child. A forward-facing child under 13 years old must ride in the front seat in a pre-advanced air bag vehicle (refer to the information brochure) because: • My vehicle has no rear seat; • Although children ages 1 to 12 ride in the rear seat(s) whenever possible, children ages 1 to 12 sometimes must ride in the front because no space is available in the rear seat(s) of my vehicle; or • The child has a medical condition which, according to the child's physician, makes it necessary for the child to ride in the front seat so that the driver can constantly monitor the child's condition.
☐	Medical condition. A passenger (including children ages 1 to 12) has a medical condition which, according to his or her physician: • Causes the passenger air bag to pose a special risk for the passenger; and • Makes the potential harm from the passenger air bag in a crash greater than the potential harm from turning off that air bag and allowing the passenger, even if belted, to hit the dashboard, or windshield in a crash.

Part E. I make this request based on the following understandings

(check each box below after reading carefully):

☐	Information brochure. I certify that I have read the NHTSA information brochure, <i>Advanced Frontal Air Bags & On-Off Switch Information</i>. I understand that air bags should be turned off only for people at risk and turned back on for people not at risk.
☐	Loss of air bag protection. I understand that turning off an air bag may have serious safety consequences. When an air bag is off, even belted people may hit their head, neck, or chest on the steering wheel, dashboard, or windshield in a moderate to serious crash. That possibility may be increased in some newer vehicles with seat belts that are specially designed to work with the air bag. Those belts, which are designed to reduce the concentration of crash forces on any single part of the body, typically allow the occupant to move farther forward in a crash than older belts. Without the air bag to cushion this forward movement, the chance of the occupant hitting the vehicle interior is increased.
☐	Waiver. I understand that motor vehicle dealers and repair businesses may require me to sign a waiver of liability before they install an on-off switch.

Part F. Certification

I certify to the U.S. Department of Transportation that the information, certifications, and understandings given or indicated by me on this form are truthful, correct, and complete to the best of my knowledge and belief. I recognize that the statements I have made on this form concern a matter within the jurisdiction of a department of the United States and that making a false, fictitious, or fraudulent statement may render me subject to criminal prosecution under Title 18, United States Code, Section 1001.

Date	Signature of owner/lessee

Additional instructions and information for vehicle owners and lessees: An owner or lessee of multiple vehicles (e.g., a fleet owner) who wants an on-off switch for the same air bag (e.g., just the passenger air bag) in more than one vehicle and for the same reason does not need to submit a separate form for each vehicle. Instead, the owner or lessee may list the make, model, model year, and vehicle identification number for each of those vehicles and attach the list to a copy of this form. Each page of the list must be signed and dated by the owner or lessee. A list may also be attached to a single copy of this form if the owner or lessee wishes to request authorization for on-off switches for both air bags in multiple vehicles.



Appendix C to Part 595

Installation of

Air Bag On-Off Switches

OMB No. 2127-0588

The form and instructions below will be included in agency letters sent to vehicle owners or lessees authorizing the installation of air bag on-off switches. Each letter will identify the owner or lessee and the vehicle for which installation is authorized.

The vehicle dealer or repair business identified below made the following on-off switch installation(s) for the air bag(s) in the motor vehicle identified above:

Name of motor vehicle dealer or repair business

Street Address (Residence)	City	State	ZIP Code

On-off switch(es) were installed for the air bag(s) checked on this form:

☐ Driver air bag

☐ Passenger air bag

Date of installation	Signature of authorized representative of dealer or repair business

Instructions for vehicle dealers and repair businesses: Within 7 days of your installation of an on-off switch in the vehicle identified above, you must complete this form and send it to:

National Highway Traffic Safety Administration
Attention: Derrick Lewis (NIO-120)
1200 New Jersey Avenue SE
Washington, DC 20590-1000

For faster response, fax to 202-493-2833
or email derrick.lewis@dot.gov.

Note: 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. That number appears above.

- 6. Add Appendix D to read as follows:
- Appendix D to Part 595—Request Form
for Air Bag On-Off Switch for
Emergency Vehicles



Appendix D to Part 595

Request for Air Bag On-Off Switch For Emergency Vehicles

OMB No. 2127-0588

If an Emergency Services Department or Organization wants authorization for front passenger air bag on-off switches for its emergency vehicles, the organization must fill out this form completely and send it to:

National Highway Traffic Safety Administration
Attention: Derrick Lewis (NIO-120)
1200 New Jersey Avenue SE
Washington, DC 20590-1000

For faster response, fax to 202-493-2833
or email derrick.lewis@dot.gov.

- Please print.
- Please note: Incomplete forms will not be processed and the requester may be contacted.
- If you need a copy of the brochure or have any questions about how to fill out this form, call the NHTSA Hotline at 888-327-4236.

Please note that a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the form for such collection of information displays a currently valid OMB control number, such as the number that appears at the top of this form.

Part A. Name and Contact Information	Email	Phone	
Name of Organization	Name of Applicant		
Street Address	City	State	ZIP Code

Part B. My department or company owns or leases the following vehicle(s) (for multiple vehicles, please attach this identifying information for all vehicles on a separate piece of paper):

Intended use of vehicle: ☐ Law enforcement ☐ Fire response ☐ Medical response																			
Make		Vehicle Identification Number (17 numbers/letters located on the driver's side of the dashboard near the windshield, and on the certification label on the driver side door frame)																	
Model	Model year																		

Part C. Switch for Front Passenger Air Bag

☐	I request authorization for the installation of an on-off switch for the front passenger air bag in my department's or company's emergency vehicle(s) to deactivate the front passenger air bag(s) in the vehicle(s) to protect our personnel, computers and related equipment from a deployment of the front passenger air bag(s).

Part D. I make this request based on the following certifications and understandings
(check each box below after reading the statements carefully):

☐	Need for the installation of equipment in the front passenger seating compartment. I certify that my department or company requires the installation of computers or other job-related equipment in the deployment zone of the front passenger air bag, and limits the use of the front passenger seating position.
☐	Ability to install equipment outside of deployment zone. I certify that my department or company is unable to have our computers or job-related equipment installed in a manner that is effective for our use outside of the deployment zone of the front passenger air bag, due to physical constraints or the particular work-related needs of our department or company.
☐	Loss of air bag protection. I understand that turning off an air bag may have serious safety consequences. When an air bag is off, even belted people may hit their head, neck, or chest on the steering wheel, dashboard, or windshield in a moderate to serious crash. That possibility may be increased in some newer vehicles with seat belts that are specially designed to work with the air bag. Those belts, which are designed to reduce the concentration of crash forces on any single part of the body, typically allow the occupant to move farther forward in a crash than older belts. Without the air bag to cushion this forward movement, the chance of the occupant hitting the vehicle interior is increased.
☐	Waiver. I understand that motor vehicle dealers and repair businesses may require me to sign a waiver of liability before they install an on-off switch.

Part E. Certification
I certify to the U.S. Department of Transportation that the information, certifications, and understandings given or indicated by me on this form are truthful, correct, and complete to the best of my knowledge and belief. I recognize that the statements I have made on this form concern a matter within the jurisdiction of a Department of the United States and that making a false, fictitious, or fraudulent statement may render me subject to criminal prosecution under Title 18, United States Code, Section 1001.

Date	Signature of Applicant

Notices

Federal Register

Vol. 89, No. 180

Tuesday, September 17, 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 October 17, 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

Title: 2024 Tenure, Ownership, and Transition of Agricultural Land (TOTAL) Survey.

OMB Control Number: 0535–0240.
Summary of Collection: The 2024 Tenure, Ownership, and Transition of Agricultural Land (TOTAL) is an integral part of the 2022 Census of Agriculture and is conducted under the authority of the Census of Agriculture Act of 1997 (Pub. L. 105–113). This law requires the Secretary of Agriculture to conduct a census of agriculture in 1998 and every fifth year following 1998. The primary functions of the National Agricultural Statistics Service (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.

Need and Use of the Information: TOTAL will be conducted as a follow-on survey to the 2022 Census of Agriculture and will use two questionnaires, one for farm operators and one for landlords who do not farm. The survey will obtain data to accurately define the economic status of U.S. farm operations and households. Detailed, farm level, economic data are essential for making informed decisions relating to the farming industry. The combined data series will yield a complete picture of farm expenses and land ownership of American farmland.

Approximately every ten years (coinciding with the Census of Agriculture), a survey of farmland ownership and farm operators regarding farm revenues and expenses is conducted. We propose to field TOTAL to address this need. In intervening years, the Agricultural Resource Management Survey Phase 3 (ARMS 3) (OMB #0535–0275), an economic survey with content similar to the farm operator portion of the decennial survey, is conducted. Accordingly, in this proposal to field TOTAL, we also propose to suspend ARMS 3 for the 2024 crop year (would have been enumerated in 2025) to minimize respondent burden as well as to remove possible duplication of data.

This is a reinstatement with change, of the TOTAL survey to be conducted as a follow-on survey to the 2022 Census

of Agriculture. Changes from the previous TOTAL survey include collecting data from all 50 States as opposed to excluding Alaska and Hawaii as in previous surveys. Alaska and Hawaii will be included in published landlord statistics for other States and not individually like what will be published for the 15 largest agricultural producing States based on value of sales (core States).

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 89,600.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 115,055.

Levi S. Harrell,

Departmental Information Collection
Clearance Officer.

[FR Doc. 2024–21069 Filed 9–16–24; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–24–MFH–0032]

Consolidated Multifamily Housing
Technical Assistance Grant Program
Notice of Funding Availability (NOFA)
Fiscal Year 2024

AGENCY: Rural Housing Service, United States Department of Agriculture (USDA).

ACTION: Consolidated notice of funding availability

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the USDA, announces the availability of funding for Multifamily Housing Nonprofit Transfer Technical Assistance (MFH NP TA) Grants and Farm Labor Housing Technical Assistance (FLH TA) Grants. This funding is available for eligible technical assistance (TA) providers seeking grants to provide technical assistance services to qualified applicants.

DATES: Complete applications must be submitted in electronic format and must be received by 12 p.m. ET (noon) on November 18, 2024.

To initiate the application process, the applicant must send an email message, by 12 p.m. ET (noon) on November 13, 2024 to the RHS Production and Preservation Division at

NPTA.RFP@usda.gov for MFH Nonprofit Transfer Technical Assistance Grant applications or RD.FLHTA@usda.gov for FLH Technical Assistance Grant applications as outlined in Section D, Application and Submission Information. Any emails submitted after 12 p.m. ET (noon) on November 13, 2024 will be rejected and will not be considered.

The General Section of this consolidated notice provides the application procedures and requirements that are applicable to both programs in this notice. Program Sections A and B of this notice provide descriptions of the specific programs for which funding is made available and explains any additional procedures and requirements applicable to the specific program. Please be sure to read both the General Section and the Program Sections of this consolidated notice to ensure that all requirements have been responded to and are included with the application.

ADDRESSES: All applications made in response to this notice must be submitted electronically to the RHS Production and Preservation Division, Program Support Branch as outlined in Section D, Application and Submission Information. Entities submitting more than one application must submit a separate email of interest for each submission. All email requests must be sent to one of the following addresses: NPTA.RFP@usda.gov for MFH NP Transfer TA Grant applications or RD.FLHTA@usda.gov for FLH TA Grant applications. This grant funding opportunity will also be announced on www.Grants.gov.

FOR FURTHER INFORMATION CONTACT: General questions about this consolidated notice may be directed to Stephanie Vergin, Policy Advisor, Production and Preservation Division, Multi-Family Housing, United States Department of Agriculture; Phone: 651-602-7820; or email at NPTA.RFP@usda.gov or RD.FLHTA@usda.gov.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Mission Area, agency, staff office, or the 711 Federal Relay Service.

SUPPLEMENTARY INFORMATION:

Background

This is the second year that MFH is issuing a consolidated notice for its technical assistance grant programs. MFH designed this consolidated notice with the intent to simplify the application process, better coordinate

services for applicants, and ensure transparency and predictability in funding cycles. It is the Agency's belief that consolidating the MFH TA notices will avoid duplication of efforts within the communities it serves and better serve its rural stakeholders most in need of these programs. The RHS Production & Preservation Division will host a virtual workshop prior to the application deadline to provide general information and guidance regarding this notice. The workshop will be announced via GovDelivery notice and will also be posted on the MFH Programs website at <https://www.rd.usda.gov/programs-services/multi-family-housing-programs>.

Prospective respondents are encouraged to read this entire notice thoroughly and attend the informational workshop for more information and clarification prior to submitting funding applications.

Organization of the Consolidated Notice

This notice is divided into two major sections, the General Section and Program Sections A and B. The standard forms, certifications, assurances, procedures, and requirements applicable to both technical assistance grant programs are included in the General Section of this notice. Program Sections A and B separately outline each technical assistance grant funding opportunity with program-specific eligibility, statutory and regulatory requirements, and include the factors used for scoring and ranking applications, the grant award process, and any additional requirements and/or limitations specific to each program.

Please read both the General Section and Program Sections A–B of this notice carefully to ensure all application and program requirements are met. Not all respondents are eligible to receive awards under both funding opportunities identified within this consolidated notice.

Rural Development Priorities: The Agency encourages respondents to consider projects that will advance the following key priorities:

- Addressing Climate Change and Environmental Justice. Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities,
- Advancing Racial Justice, Place-Based Equity, and Opportunity. Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Creating More and Better Market Opportunities. Assisting rural communities to recover economically

through more and better market opportunities and through improved infrastructure.

For further information, visit <https://www.rd.usda.gov/priority-points>.

Table of Contents: General Section

- A. Program Descriptions
- B. Federal Award Information
- C. Eligibility Information
- D. Application and Submission Information
- E. Application Review Information
- F. Federal Award Administration Information
- G. Federal Awarding Agency Contact
- H. Other Information

I. General Section

RHS administers the Multifamily Housing Programs that provide affordable multifamily rental housing in rural areas by financing projects geared for low-income, elderly, and disabled individuals and families as well as domestic farm laborers. The MFH programs extend their reach by guaranteeing loans for affordable rental housing designed for low to moderate-income residents in rural areas and towns. MFH Programs are administered, subject to appropriations, by the USDA as authorized under Sections 514, 515, 516 and 521 of the Housing Act of 1949, as amended.

A. Program Descriptions

(1) Purpose of the Programs

The Section 515 MFH NP TA Grants are intended to provide technical assistance to multifamily housing borrowers and applicants to facilitate the acquisition of Section 515 properties by nonprofit organizations and public housing authorities.

The FLH TA Grants are intended to provide technical assistance to qualified Section 514 loan and Section 516 grant applicants to encourage the development, repair, and preservation of domestic and migrant FLH projects.

RHS has a strong interest in broad geographic availability of technical assistance services and expanding the pool of technical assistance providers. Respondents will compete in a national funding pool and multiple awards may be made in a single region. However, if there are qualified and eligible respondents, RHS will prioritize awarding at least one MFH NP TA Grant and one FLH TA Grant in each of the following four geographic regions:

Midwestern Region: IA, IL, IN, KS, MI, MN, MO, ND, NE, OH, SD, WI
Northeastern Region: CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV
Southern Region: AL, AR, FL, GA, KY, LA, MS, NC, OK, PR, SC, TN, TX, VI
Western Region: AK, AZ, CA, CO, HI, ID, MT, NM, NV, OR, UT, WA, WY

Multifamily Housing's four geographic regions may also be found on the following website: <https://www.rd.usda.gov/programs-services/all-programs/multi-family-housing-programs>.

Each entity applying for funding under this notice, whether individually or jointly, is limited to submission of one grant application per technical assistance program, per geographic region. Entities applying in more than one geographic region must submit separate applications for each region in which they apply. Respondents may propose to serve single-State or multi-State areas within geographic regions.

(2) Statutory and Regulatory Authority

MFH NP TA Grants are authorized under Sec. 745 of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103), Sec. 745 of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), and Sec. 743 of the Consolidated Appropriations Act, 2024 (Pub. L. 118–42) and implemented by 7 CFR part 3560.

MFH FLH TA Grants are authorized under Section 516(i) of the Housing Act of 1949, as amended; 42 U.S.C. 1486(i); and implemented by 7 CFR part 3560.

To be eligible for funding under this consolidated notice, respondents must meet all statutory and regulatory requirements applicable to the program(s) for which funding is sought. RD program regulations may be found at the following website: <https://www.rd.usda.gov/page/regulations-and-guidance>.

(3) Definitions and Acronyms

The definitions and acronyms applicable to this notice are published at 7 CFR part 3560.11 <https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XXXV/part-3560#3560.11>; 7 CFR 15.2 <https://www.ecfr.gov/current/title-7/subtitle-A/part-15>; 2 CFR part 200 <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>; and 2 CFR part 400 <https://www.ecfr.gov/current/title-2/subtitle-B/chapter-IV/part-400>.

The following supplementary definitions and acronyms are applicable to and for the purpose of this notice only.

Applicant—one who submits an application to receive technical assistance services from a technical assistance provider (Grantee), and *application* means such an application.

Broad-based nonprofit organization (as an Off-FLH loan/grant applicant)—nonprofit organization with a membership that reflects a variety of interests in the market area.

Capacity—demonstrated experience in the areas of federal grant administration and technical assistance program development and delivery.

Co-respondent—a separate legal entity made part of the application process by the primary respondent through a Memorandum of Understanding (MOU) or other agreement who will be accountable to the primary respondent for any federal award funds received.

Conflicts of interest—situations in which an officer, director, board member, agent, employee, or partner of the non-Federal entity being considered for a Federal award, any immediate family member of these parties, or any organization which employs or is about to employ any of these parties, have a competing personal, professional, financial, and/or other interest in activities performed under the Federal award or may receive a tangible personal benefit from activities performed under the Federal award which renders them unable, or gives the appearance of being unable, to be impartial in conducting/administering the Federal award.

Consultant—an individual who provides professional advice or services for a fee but may not be an employee of the engaging party. The term “consultant” may also include a firm that provides paid professional advice or services, or independent entities engaged under a grant to provide a specific service or product (product purchase or fee-for-service). They are not employees of the grantee, and no employer-employee relationship exists between the consultant and the grantee.

Contract—for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a federal award.

Contractor—an entity that receives a contract as defined in this section.

Curable deficiency—omission, error, or oversight that, if corrected, would not alter the review and/or scoring of an application in a positive or negative fashion.

Disallowed costs—charges to a federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Expenditures—charges made by a non-Federal entity to a project or program for which a Federal award was received.

Federal awarding agency—the Federal agency that provides a Federal award directly to a non-Federal entity.

Federal share—the portion of the Federal award costs that are paid using Federal funds.

Grant Agreement—a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304: (1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use; (2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award; (3) Does not include an agreement that provides only: (i) Direct United States Government cash assistance to an individual; (ii) A subsidy; (iii) A loan; (vi) A loan guarantee; or (v) Insurance.

Grantee—a legal entity that has been awarded financial assistance under one of the Agency's grant programs and assumes responsibility for fiscal accountability for managing awarded funds, supervision of grant-supported activities, and submission of final reports.

Indirect Costs (facilities & administrative (F&A))—costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect F&A costs. Indirect F&A cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate—a percentage established by a Federal department or agency for a grantee organization, which the grantee uses in computing the dollar amount it charges to the grant to reimburse itself for indirect costs incurred in doing the work of the grant project.

Key personnel services—technical assistance service delivery and grant administration.

Market Area—the geographic or locational delineation of the market for a specific project, including outlying areas that will be impacted by the project, *i.e.*, the area in which

alternative, similar properties effectively compete with the subject property.

Non-curable deficiency—omission, error, or oversight that, if corrected, would alter the review and/or scoring of the application in a positive or negative fashion.

Non-Federal Entity—a State, local government, Indian tribe, or nonprofit organization that carries out a federal award as a recipient or subrecipient.

Organizational conflicts of interest—situations in which the non-Federal entity being considered for a federal award is unable, or appears to be unable, to be impartial in conducting/administering the Federal award because of its relationship with a parent company, affiliate, subsidiary organization, or other related organization or party.

Period of Performance—the total estimated time interval between the start of the initial grant award and the planned end date.

Primary Respondent—one who submits an application, request, or plan required to be approved by an Agency as a condition of eligibility for Federal financial assistance, and *application* means such an application, request, or plan.

Respondent (see *Primary Respondent*).

Supportive Services—services that help tenants with challenges maintain stable housing (e.g., employment assistance, meals, transportation, personal care assistance, housekeeping, wellness checks, care coordination, and outpatient health services).

Targeted service area—area targeted to receive technical assistance services.

Technical Assistance—technical expertise, information and services provided by eligible entities with the necessary knowledge, experience, and capacity to provide the services outlined in this notice to eligible respondents.

Commonly Used Acronyms

CFR Code of Federal Regulation
FLH Farm Labor Housing
MFH Multifamily Housing
NOFA Notice of Funding Availability
NP Nonprofit organization
OMB Office of Management and Budget
PHA Public Housing Authority
RD Rural Development
RHS Rural Housing Service
SAM System for Award Management
SOW Statement of Work/Scope of Work
TA Technical Assistance
TDHE Tribally Designated Housing Entity
UEI Unique Entity Identifier
USDA United States Department of Agriculture

(4) Application for Awards

Awards under these programs will be made on a competitive basis using specific selection criteria contained in Program Sections A and B of this notice.

The Agency advises all interested parties that expenses incurred in applying for this notice will be borne by and be at the respondent's sole risk.

B. Federal Award Information

Funding Opportunity Title: Consolidated MFH Technical Assistance Grant Program NOFA FY 2024

Announcement Type: Notice of Funding Availability (NOFA)

Assistance Listing (AL) Numbers:

- Multifamily Housing Nonprofit Transfer Technical Assistance Grants: 10.494
- Farm Labor Housing Technical Assistance Grants: 10.495

Funding Opportunity Number: USDA-RD-HCFP-NPTA-FLHTA

Dates: Complete applications must be submitted in electronic format and must be received by 12 p.m. ET (noon) on November 18, 2024. To initiate the application process, the applicant must send an email message, by 12 p.m. ET (noon) on November 13, 2024 to the RHS Production and Preservation Division at NPTA.RFP@usda.gov for MFH Nonprofit Transfer Technical Assistance Grant applications or RD.FLHTA@usda.gov for FLH Technical Assistance Grant applications as outlined in Section D, Application and Submission Information. Any emails submitted after 12 p.m. ET (noon) on November 13, 2024 will be rejected and will not be considered.

Available Funds:

- \$4.9 million for MFH NP TA Grants—*Fiscal Year Funds:* FY 2022, FY 2023, and FY 2024
- \$2 million for FLH TA Grants—*Fiscal Year Funds:* FY 2024

Type of Award: Technical Assistance Grants

Award Amounts:

- The minimum and maximum award amounts per funded MFH NP TA Grant application are \$100,000 and \$750,000, respectively.
- The minimum and maximum award amounts per funded FLH TA Grant application are \$50,000 and \$250,000, respectively.

Anticipated Award Date: The Agency anticipates making awards 120 days after the application deadline.

Performance Period: 24 months from executed grant agreement.

Renewal or Supplemental Awards None.

Type of Assistance Instrument: Grant Agreement.

Respondents selected for funding will complete a grant agreement suitable to the Agency, which outlines the terms and conditions of the Grant award. The Agency may request changes to the SOW which will be incorporated into the grant agreement. If a selected grantee does not accept the terms of the Agency and/or does not deliver an executed Grant Agreement to the Agency within ten (10) business days after receiving the Grant Agreement with the Agency-approved SOW, the Agency may choose to rescind the award and select another grantee based on scoring without further notice.

The grant period of performance is 24 months with an extension allowed for up to an additional 12 months at the Agency's discretion. However, proposals should be structured to utilize all grant funds within 24 months from the date of the award. The grant term will be defined in the Grant Agreement and will become effective once signed by the Grantee and the Agency. Grant funds will be obligated within ten (10) business days after both parties have executed the Grant Agreement.

C. Eligibility Information

(1) Eligible Respondents

To be considered eligible for funding under this notice, all respondents are required to meet both the general eligibility requirements outlined below, as well as the program specific requirements outlined in Program Sections A or B of this notice, as applicable.

Except as may be modified in Program Sections A and B of this notice, the general requirements, procedures, and principles outlined below apply to respondents for both funding opportunities contained in this notice.

(a) All respondents will be screened for eligibility to participate in the grant program using Treasury's Do Not Pay Portal in compliance with the Improper Payments Elimination and Recovery Improvement Act.

(b) Debarment and suspension information is required in accordance with 2 CFR 180 (OMB's Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)) supplemented by 2 CFR 417 (Nonprocurement Debarment and Suspension) if it applies. The section heading is "What information must I provide before entering into a covered transaction with a Federal agency?" located at 2 CFR 180.335. It is part of OMB's Guidance for Grants and Agreements concerning Governmentwide Debarment and Suspension. Respondents are not

eligible if they have been debarred or suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs under 2 CFR parts 180 and 417.

(c) **Conflicts of Interest.** No Grantee funded under this notice or its officers, directors, board members, agents, employees, or partners can participate in conducting or administering the grant award if a real or apparent conflict of interest exists.

Entities applying for funding under this notice and all funded Grantees must disclose in writing any potential conflicts of interest to the Agency, including situations that would create a conflict of interest, potential for conflict of interest, or any appearance of a conflict of interest.

Unless approved by the Agency, Grantees may not provide TA for projects in which they or their third-party affiliates have a direct or indirect ownership interest. Respondents must disclose all MFH projects in which they or their third-party affiliates have a direct or indirect ownership interest.

Unless approved by the Agency, neither the Grantee nor any officer, director, board member or partner of the Grantee may accept or share any compensation or remuneration, directly or indirectly, in any form whatsoever, from or with any party interested in the activities performed under the grant agreement.

Unless approved by the Agency, neither the Grantee nor any officer, director, board member, partner or any person employed by the Grantee may accept compensation or remuneration contrary to the intentions of the grant agreement.

Unless approved by the Agency, neither the Grantee nor any officer, director, board member or partner of the Grantee may be involved as an officer, director, board member or general partner in a business venture with an officer, director, board member or general partner of any other party interested in the activities performed under the grant agreement.

Grantees funded under this notice must maintain written standards of conduct governing organizational conflicts of interest and conflicts of interest related to the performance of its officers, directors, board members, agents, and employees in conducting/administering Federal grant awards. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by the Grantee and its directors, board members, officers, employees, and agents.

(2) *Cost Sharing or Matching*

There are no cost sharing or matching requirements for either program.

(3) *Discretionary Points*

Please refer to Program Sections A and B.

(4) *Other*

Each entity applying for funding under this notice, whether individually or jointly, may submit only one application per program, per geographic region. MFH's geographic regions are listed in the General Section A.1. of this notice.

The use of consultants/contractors for key personnel services (technical assistance service delivery and grant administration) is limited to a maximum of 20 percent of the total key personnel services budget. This requirement is intended to advance the Agency's goal of increasing the capacity of Agency-funded nonprofit TA providers to deliver technical assistance services directly to recipients.

The total direct and indirect administrative costs associated with the administration of the grant should not exceed 20 percent of the total technical assistance grant fund.

Any respondent with an open MFH Transfer or FLH technical assistance funding award must demonstrate satisfactory progress toward completion of the work plan identified in their Agency-approved grant agreement to be eligible for funding under this notice. In evaluating satisfactory progress, RHS will consider past performance in managing funds, including, but not limited to, the ability to account for funds appropriately; timely use of funds received from RHS; meeting performance targets for completion of activities; and receipt of promised matching or leveraged funds.

D. Application and Submission Information

(1) *Content and Form of Application Submissions*

Applications to this notice must be submitted electronically using the process described below. To initiate the application process, the applicant must send an email message, by 12 p.m. ET (noon) on November 13, 2024 to the RHS Production and Preservation Division at NPTA.RFP@usda.gov for MFH Nonprofit Transfer Technical Assistance Grant applications or RD.FLHTA@usda.gov for FLH Technical Assistance Grant applications. The email message must contain the following information:

(a) Subject line: TA Grant Application Submission

(b) Body of email: Respondent Name and complete Contact Information (including address, phone number, email address to receive application submission information).

(c) Request language: Please provide application submission instructions so that we may submit our MFH Nonprofit Transfer TA Grant application or Farm Labor Housing TA Grant application.

Application submission instructions will be emailed to all interested respondents supplying valid email addresses within two (2) business days from the date the email of interest is received by the Agency. Any email submitted after 12 p.m. ET (noon) on November 13, 2024 will be rejected and will not be considered. Entities submitting more than one application must submit a separate email of interest for each submission. The Agency is not liable for technical issues or system-related difficulties that affect an applicant's ability to submit applications in a timely fashion in accordance with the instructions of this NOFA.

(2) *Forms, Requirements and Procedures for All Respondents*

All respondents are required to electronically submit signed copies of the standard forms, certifications, and assurances listed in this section, unless the requirements in the Program Section specify otherwise. All forms should be completed in their entirety using the most current versions of unexpired OMB-approved forms. All application packages must include a Table of Contents and a separate one-page sheet listing each of the Scoring Criteria from Program Sections A or B, followed by the page numbers of all relevant material and documentation contained within the submitted application materials to support those criteria.

(i) Except as may be modified in the Program Sections A and B, the forms and standard certifications and assurances required for all respondents are:

(A) SF-424, "Application for Federal Assistance" which can be obtained at: <https://www.grants.gov/>.

(B) Standard Form 424A, "Budget Information-Non-Construction Programs" which can be obtained at: <https://www.grants.gov/>.

(C) Negotiated Indirect Cost Rate Agreement (NICRA), if applicable, or a statement certifying the entity's election to charge the de minimis rate of 10 percent of the modified total direct costs (MTDC).

(D) Form SF–LLL, “Disclosure Form to Report Lobbying,” if applicable, or a statement certifying that the organization does not lobby.

(E) Form RD 3560–30, “Certification of no Identity of Interest (IOI),” if applicable: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-30.PDF>.

(F) Form RD 3560–31, “Identity of Interest Disclosure/Qualification Certification” if applicable (IOI is defined in 7 CFR 3560.11): <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-31.PDF>.

(G) Form RD 400–4, “Assurance Agreement”: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF>.

(H) Form RD 400–6, “Compliance Statement”: <https://formsadmin.sc.egov.usda.gov/eFormsAdmin/browseFormsAction.do?pageAction=displayPDF&formIndex=0>.

(ii) All responding entities must include organizational status documents and current (within six months of this notice’s deadline date) financial statements to evidence their status as a properly organized private or public nonprofit agency, or public/tribal housing authority, with the financial ability to carry out the approved objectives of the TA grant program under which funding is sought. This requirement includes (at minimum):

(A) Status as a NP (*i.e.*, Articles of Incorporation, IRS nonprofit certification) or PHA.

(B) Good standing within the State or Tribe in which the entity is organized.

(C) Legal authority to provide services stated in the application under the applicable laws for the state(s) in which operation is proposed. (Examples of acceptable documentation for this requirement include, but are not limited to, bylaws, organizational charters, and statutes or regulations).

(D) Certification of no current or unresolved default or violation of any other Federal, Tribal, State, or local grant or loan agreement(s).

(E) The requirements above will also apply to all entities performing services on behalf of the respondent.

(3) System for Award Management and Unique Entity Identifier

(a) At the time of application, each respondent must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR 25. In order to register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are

available at <https://sam.gov/content/entity-registration>.

(b) Respondent must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Respondent must complete the Financial Assistance General Certifications and Representations in SAM.

(d) Respondent must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(e) The Agency will not make an award until the respondent has complied with all SAM requirements including providing the UEI. If a respondent has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the respondent is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another respondent.

(4) Submission Dates and Times

Submission dates and times can be found in the **DATES** section of this notice.

(5) Intergovernmental Review

Applications under this notice are not subject to Executive Order 12372, “Intergovernmental Review of Federal Programs.”

(6) Funding Restrictions

Refer to Program Sections A and B for Ineligible Grant Fund Purposes/Costs.

E. Application Review Information

(1) Application Review Criteria

To be eligible for funding under this notice, respondents must meet the criteria set forth in the individual Program Sections A and B of this notice, as well as all general eligibility criteria as follows:

- a. The application must be complete as specified by this notice;
- b. The complete application must be received by the submission deadline specified in this notice;
- c. The application proposal must be for authorized purposes; and
- d. The respondent must be an eligible entity and must not currently be debarred, suspended, or delinquent on any Federal debt.

No application will be accepted after the specified deadline unless the date and time is extended by another notice published in the **Federal Register**. Applications will first be reviewed to determine if they meet the “Eligible

Respondents” eligibility requirements outlined in Program Sections A or B as applicable. If all “Eligible Respondents” eligibility requirements are met, applications will then be reviewed for completeness. All complete applications will be reviewed for eligible grant activities, eligible costs, and eligible purposes. If the Agency determines that any application is ineligible or incomplete, application processing will be discontinued, which means the application will be rejected and returned to the respondent without being scored.

RHS may contact respondents to clarify items and/or to correct curable (correctable) technical deficiencies identified within application packages after the application deadline is reached. RHS will notify respondents of any curable deficiencies and will do so on a uniform basis for all respondents. If deficiencies are not corrected within the period prescribed by RHS, the application will be rejected as incomplete, and will not be considered for funding.

Only applications meeting all the general eligibility criteria above will be scored and ranked. RHS will consider the scoring factors outlined in Program Sections A and B to score and rank application(s) for each TA program respectively. Points will be awarded only for factors that are well-documented in the application package and, in the opinion of the Agency, meet the objectives outlined in each of the evaluation criteria. References to external websites, publications, and/or other information not submitted as part of the application package will not be reviewed or considered. Therefore, full documentation and support of all criteria is recommended and encouraged.

Risk Review: The Agency may request additional documentation from selected respondents in order to evaluate the financial, management, and performance risk posed by awardees as required by 2 CFR 200.206. Based on the risk review, the Agency may apply special conditions that correspond to the degree of risk assessed, either pre-award or post-award.

If the Agency determines it is unable to select an application for funding, the respondent will be informed in writing. Such notification will include the reasons the respondent was not selected. The Agency will advise respondents whose applications do not meet eligibility and/or selection criteria of applicable review rights or appeal rights in accordance with 7 CFR part 11.

(2) Review and Selection Process

Refer to Program Sections A and B for program specific application reviewing, scoring and selection processes.

F. Federal Award Administration Information

(1) Federal Award Notice

The Agency will notify in writing respondents whose applications have been selected for funding. At the time of notification, the Agency will advise respondents what additional information and documentation is required along with a timeline for submitting the additional information.

(2) Administrative and National Policy Requirements

The following additional requirements apply to grantees selected for these TA Grant program awards:

(a) Grantees must complete Form RD 1942–46 “Letter of Intent to Meet Conditions.”

(b) Grantees must complete Form RD 1940–1, “Request for Obligation of Funds.”

(c) Grantees must use Form SF 270, “Request for Advance or Reimbursement,” to request reimbursements and provide receipts for expenditures, timesheets, and any other documentation to support the request for reimbursement, as determined by the Agency.

(d) Grantees must maintain a financial management system that is acceptable to the Agency.

(e) Grantees must certify that the U.S. has not obtained an outstanding judgment against their organization in a Federal Court (other than in the United States Tax Court).

(f) MFH NP TA Grants are authorized under Sec. 745 of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103), Sec. 745 of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), and Sec. 743 of the Consolidated Appropriations Act, 2024 (Pub. L. 118–42) and implemented by 7 CFR part 3560.

MFH FLH TA Grants are authorized under Section 516(i) of the Housing Act of 1949, as amended; 42 U.S.C. 1486(i); and implemented by 7 CFR part 3560.

(g) Workplace identification is required under the drug-free workplace requirements in 2 CFR part 182, which provides guidance on the portion of the Drug-Free Workplace Act applicable to grants, as adopted by 2 CFR part 421. Therefore, grantees must identify all organizational known workplaces by including the actual physical addresses of buildings (or parts of buildings) or

other sites where work under the award takes place.

(h) Grantees must comply with all other requirements in 2 CFR part 182 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)) and 2 CFR part 421 (Requirements for Drug Free Workplace (Financial Assistance)).

(3) Reporting

(a) Grantees must comply with reporting requirements of 2 CFR part 200 and must provide the required financial status and project performance reports for the period after grant approval and throughout the grant period of performance as outlined in the Agency approved grant agreement.

(b) Grantees must maintain records to document all activities and expenditures utilizing technical assistance grant funds. Receipts for expenditures will be included in this documentation.

(c) Grantees must provide a final project performance report as outlined in the Agency approved grant agreement.

G. Federal Awarding Agency Contact(s)

Stephanie Vergin, Policy Advisor, Production and Preservation Division, Multi-Family Housing, United States Department of Agriculture at NPTA.RFP@usda.gov or RD.FLHTA@usda.gov.

H. Other Information

1. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), OMB must approve all “collection of information” as defined at 42 U.S.C. 3502(3). In accordance with the Paperwork Reduction Act of 1995, the information collection reporting and recordkeeping requirements as covered in this notice, are exempt because the requirements are not imposed on 10 or more people, as defined at 44 U.S.C. 3502(3)(A)(i).

RHS has concluded that the reporting requirements contained in this NOFA will involve less than 10 persons and do not require approval under the provisions of the Act.

2. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this funding announcement has been reviewed in accordance with 7 CFR part 1970 (Environmental Policies and Procedures). As permitted by 7 CFR 1970.51(b), The Agency has determined that because:

- this action meets the criteria established in 7 CFR 1970.53(f);
- no “extraordinary circumstances exist” as defined at 7 CFR 1970.52(a); and
- the action is not “connected” (see 40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts, is not considered a “cumulative action,” and;
- the action is not precluded by 40 CFR 1506.1.

Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required. All recipients under this notice are subject to the requirements of 7 CFR part 1970.

• For Non-Construction Programs under the National Environmental Policy Act (NEPA):

Technical assistance awards for financial and technical assistance under this notice are classified as a Categorical Exclusion according to 7 CFR 1970.53(b), and usually do not require any additional documentation. MFH will review each grant application to determine its compliance with 7 CFR 1970. The respondent may be asked to provide additional information or documentation to MFH with this determination.

3. Federal Funding Accountability and Transparency Act

All respondents, in accordance with 2 CFR part 25 (<https://www.ecfr.gov/current/title-2/part-25>), must be registered in SAM and have a UEI number as stated in Section D.3. of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170 (<https://www.ecfr.gov/current/title-2/part-170>).

4. Civil Rights Act

All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA 7 CFR part 15, subpart A and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

All respondents must certify to compliance with 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964, by

completing the Financial Assistance General Certification and Representations in SAM.

Civil Rights compliance includes, but is not limited to the following:

(a) Collecting and maintaining data provided by ultimate recipients on race, sex, and national origin.

(b) Collection of race and ethnicity data in accordance with Office of Management and Budget (OMB) **Federal Register** notice, “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity” (published October 30, 1997 at 62 FR 58782). Sex data will be collected in accordance with Title IX of the Education Amendments of 1972.

This data should not be submitted with the application but should be available upon request by the Agency.

5. *USDA Nondiscrimination Statement*

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status,

income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language) should contact the responsible Mission Area, agency, staff office, or the 711 Federal Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant’s name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-

3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: program.intake@usda.gov

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II. Program Sections
Organization of the Program Sections

Program Sections A and B of this notice provide descriptions for both of the specific programs. In addition to the requirements set forth in the General section, the following program sections outline additional procedures and requirements applicable to each program.

Both funding opportunities contained in this consolidated notice are identified in the following chart entitled Consolidated Multifamily Housing Technical Assistance Grant Program Funding Chart FY 2024. This chart includes Program Name, the Assistance Listing Number for each program, the Funding Amounts Available, and the Program Section Reference for program-specific application requirements.

CONSOLIDATED MULTIFAMILY HOUSING TECHNICAL ASSISTANCE GRANT PROGRAM FUNDING CHART
FY 2024

TA program name	Assistance listing No.	Funding available	Program section reference
Multifamily Housing Nonprofit Transfer Technical Assistance Grants	10.494	\$4.9 million	A
Farm Labor Housing Technical Assistance Grants	10.495	2 million	B

Program Section A
Multifamily Housing Nonprofit Transfer Technical Assistance Grants
Table of Contents

- A. Program Description
- B. Federal Award Information
- C. Eligibility Information
- D. Application and Submission Information
- E. Application Review Information

A. Program Description

The technical assistance (TA) grants offered under this funding opportunity are for the purpose of facilitating the transfer and preservation of existing Rural Rental Housing properties under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. 1485). Agency regulations for the Section 515 program are published at 7 CFR part 3560. The

Agency is authorized to utilize the appropriations from each fiscal year, for a total appropriation of \$4.9 million, to provide grants to NPs and PHAs meeting the qualification standards of this Notice, who will then provide technical assistance, including financial and legal services, to MFH borrowers to facilitate the acquisition of Section 515 MFH properties by nonprofit organizations and public housing authorities. Public Law 117-103, Sec. 745; Public Law 117-328, Sec. 745; and Public Law 118-42, Sec. 743. These grants must be provided in areas where the USDA Secretary determines there is a risk of loss of affordable housing in order to keep such properties in the MFH program. Risk of loss of affordable housing may be driven by market conditions or may be due to property-specific factors, including mortgages

reaching maturity, owner ability to prepay existing Agency loans, poor physical condition of the property, or failing ownership.

B. Federal Award Information

Type of Award: Grant
Fiscal Year (FY) Funds: 2022, 2023 and 2024

Award Amounts: \$4.9 million for MFH Nonprofit Transfer TA Grants

C. Eligibility Information

(1) Eligible Respondents

Eligibility for MFH Nonprofit Transfer Technical Assistance Grants is limited to private and public nonprofit organizations and public housing authorities meeting the qualification requirements of this Notice. Potentially qualifying NPs and PHAs include

tribally designated housing entities (TDHE) and Tribal housing NPs.

Eligible entities responding to this notice must have the knowledge, ability, technical expertise, practical experience, and capacity necessary to develop and package Section 515 property transfer transactions. They must also demonstrate the ability to provide technical assistance to NPs and/or PHAs to facilitate their acquisition of Section 515 properties. In addition, all eligible entities must demonstrate the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a cost-efficient and timely manner within the 24-month grant term.

(2) Eligible Grant Activities

Grantees awarded under this notice are expected to provide technical assistance services to NPs and/or PHAs who are acquiring Section 515 projects in order to increase TA recipients' capacity (knowledge, skills, and abilities) in the following areas: Locating potential Section 515 properties for transfer; completing the transfer analysis, negotiation, application, underwriting, and closing processes; and identifying and securing capital and operating funding from the Agency and/or other sources for the purpose of acquisition, repair, rehabilitation, and/or ongoing operations of the property, including the coordination and provision of supportive services for tenants.

(3) Eligible Costs

Costs will be limited to those allowed under 2 CFR 200. Grantees may, with Agency concurrence and approval, utilize MFH NP TA grant funds for the following purposes: soft costs such as financial analysis, transaction structuring analysis and completion of other transaction details such as Capital Needs Assessments, appraisals, market surveys or other consultation, and advisory and non-construction services required as part of the application process. Grantees may request Agency approval on a case-by-case basis for costs not included in this list.

(4) Ineligible Purposes/Costs

In addition to costs identified as unallowable by 2 CFR parts 200 and 400, grant funds cannot be used for the following:

(a) Grant funds cannot be used by the grantee for activities that are not directly related to preservation transactions (such as conferences, sponsorships, provider personnel education/training, etc.).

(b) Grant funds cannot be used by the grantee for activities or transactions in which they have any direct or indirect ownership interest (regardless of whether it is an interest as a current or prospective owner).

(c) Grant funds cannot be used to reimburse grantees for technical assistance services provided to another nonprofit or public body applicant in the development and packaging of its loan/grant docket and project when those applicant entities have requested reimbursement for technical assistance expenses as part of their total project development cost (See 7 CFR 3560.553(c) and 7 CFR 3560.53(o)(3)). Duplication of service costs is not allowed.

(d) Grant funds cannot be used when an identity of interest exists between the technical assistance provider (or any third-party entity acting on their behalf) and the loan/grant applicant. Identity of interest is defined in 7 CFR 3560.11.

(e) Grant funds cannot be used for building materials, labor costs, or expenditures otherwise typically included as any hard costs for actual construction or repairs, prepayment, interest, or principal payments.

D. Application and Submission Information

(1) Electronic Application Submissions

All materials must be submitted electronically as outlined above in Section D, Application and Submission Information in the General Section of this notice.

(2) Content and Form of Application Submissions

In addition to the forms, certifications and assurances required of all respondents as outlined in the General Section of this notice, complete application packages for the MFH NP TA Grant must also contain a written grant proposal that includes the following required information:

(a) Summary page, which must include the following:

a. Responding entity's name, address, telephone number, and complete contact information for the entity's main point of contact;

b. Responding entity's Taxpayer Identification Number;

c. Grant Amount requested;

d. The State(s), area(s), and/or geographic region for which the application is being submitted; and

e. Responding entity's Unique Entity Identifier (UEI) number required for registration in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b).

(b) Organizational Expertise and Experience Capabilities Statement. Responding entities must provide a capabilities statement describing their knowledge, demonstrated ability, practical experience, and capacity to develop and package Section 515 property transfer transactions. They must also describe their ability to provide technical assistance to NPs and/or PHAs to facilitate the acquisition, repair, and rehabilitation of Section 515 MFH properties. In addition, respondents must demonstrate the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a cost-efficient and timely manner within the 24-month grant term. If the respondent intends to have other entities working on its behalf, those entities must be identified and their abilities to meet the stated eligibility requirements and experience in delivering approved technical assistance services must also be addressed.

(c) Narrative. The responding entity must include a written narrative describing its knowledge, demonstrated ability, and practical experience in completing transfers of Section 515 properties and/or providing training and technical assistance to NPs and PHAs for the transfer and rehabilitation of Section 515 properties. If the responding entity intends to have other entities working on its behalf, the narrative must identify those entities and address their ability to meet the stated eligibility requirements and experience in delivering approved technical assistance services.

Respondents must identify Section 515 transfer transactions for which the respondent and/or other entities working on its behalf has provided technical assistance to the transferor or transferee on applications for the transfer of Section 515 projects in the last five years. For the projects and applications noted above, the respondent must provide the Section 515 property name and location (city and state), technical assistance recipient organizational name and location (city and state), source of technical assistance funding, and outcome of the transaction (*i.e.*, no ownership change, transaction in process, transfer completed).

(d) Key Personnel and Staffing Plan. Proposals must include the resumes of all staff personnel that will perform key personnel services of (1) delivery of technical assistance and (2) administration of the grant. (Capital Needs Assessments (CNAs), appraisals, and market surveys are not considered to be key personnel services). The staffing plan must describe each staff

member's ability to perform the proposed activities and/or their experience in successfully managing service delivery of TA grants. The plan must include a staffing chart complete with name, job title, salary, hours, timelines, and descriptions of all proposed employee duties that will achieve the objectives of the grant program. If respondents intend to contract for any key personnel services from outside their organization (not to exceed the 20% limit), the qualifications of all entities acting on behalf of respondents must also be addressed.

(e) Statement of Work (SOW). Responding entities must submit a detailed SOW that includes the following requirements:

a. Introduction/overview with a description of the organization's proposed plan to provide technical assistance to NPs and PHAs in the acquisition of Section 515 properties.

b. The organization's capabilities to execute the proposed plan within the prescribed 24-month grant term.

c. The organization's plan to identify potential sellers of Section 515 properties.

d. The organization's plan to identify and provide services to NPs and PHAs interested in acquiring these properties.

e. Types of proposed technical assistance and legal and/or financial services that will enable NPs and/or PHAs to submit transfer applications to the Agency within the prescribed 24-month grant term. Clearly explain the services to be provided directly by the respondent's organization and all services that will be provided by third parties. The responding entity must specify the State(s), area(s), and/or geographic region in which they and any proposed third-party subrecipients/contractors/consultants will offer technical assistance services. Respondents must also explain why each targeted service area and/or property is at risk of loss of affordable housing.

f. The organization's experience in identifying and successfully assisting entities in the acquisition, repair, and rehabilitation of Section 515 MFH properties.

g. A detailed budget justification that aligns with the key project tasks/activities and a grant funds usage projection that corresponds with a 24-month timeline for service delivery. The grant funds usage projection should illustrate direct and indirect administrative costs in dollars, and as a percentage of the technical assistance services provided (not to exceed 20 percent).

h. Additional strengths, qualifications, or capabilities not included above that enhance the respondent's capacity to deliver services under this grant.

i. Current working agreements or contracts between the respondent and any entity performing services on its behalf must be submitted as part of the application package and any associated costs must be included in the responding entity's budget.

E. Application Review Information

All application packages will be reviewed to determine eligibility and completeness. All eligible, complete applications will be evaluated and competitively scored using the Application Scoring Criteria outlined below. Points will be awarded only for factors that are well-documented in the application package and, in the opinion of the Agency, meet the objectives outlined in each of the evaluation criteria. References to external websites, publications and/or other information not submitted as part of the application package will not be reviewed. Therefore, full documentation and support of all criteria is encouraged.

The review process designed for this notice will evaluate the degree to which the application sets forth measurable, realistic objectives that are consistent with this notice and can be completed within a 24-month grant period consistent with the application and processing guidance established by Agency transfer regulations.

Application Scoring Criteria (Points Can Be Earned In All Sections)

1. Respondent Experience (RHS Section 515)

a. Respondent has successful, verifiable experience completing Section 515 transfers during the past five years. Experience must be demonstrated by submitting a list of past 515 project transfers. To receive points, the respondent must have acted as the developer or technical assistance provider for the project and, at a minimum must have a submitted transfer application currently pending approval or closed with the Agency:

- 1–2 Section 515 project transfers: 10 points
- 3–5 Section 515 project transfers: 20 points
- 6–8 Section 515 project transfers: 30 points
- 9 or more Section 515 project transfers: 40 points

b. Respondent has successful, verifiable experience providing technical assistance that has increased

the capacity of NPs and/or PHAs to complete Section 515 transfers. Experience must be demonstrated by submitting a list of past instances of providing technical assistance. Points will be awarded according to the number of NP and/or PHA clients to whom the respondent has provided Section 515 technical assistance services during the past five years:

- 1–4 Section 515 technical assistance clients: 10 points
- 5–8 Section 515 technical assistance clients: 20 points
- 9 or more Section 515 technical assistance clients: 30 points

2. Respondent Experience (Other Affordable Multifamily Housing Programs)

a. Respondent has successful, verifiable experience completing other affordable MFH project transfers during the past five years. Experience must be demonstrated by submitting a list of other affordable housing (non-515) past project transfers. To receive points, the respondent must have acted as the developer or technical assistance provider for the project and, at a minimum, obtained funding approval:

- 1–2 affordable housing project transfers: 5 points
- 3–5 affordable housing project transfers: 10 points
- 6–8 affordable housing project transfers: 15 points
- 9 or more affordable housing project transfers: 20 points

b. Respondent has successful, verifiable experience providing technical assistance that has increased the capacity of NPs and/or PHAs to complete other (non-Section 515) affordable MFH project transfers. Experience must be demonstrated by submitting a list of past instances of providing technical assistance. Points will be awarded according to the number of NP and/or PHA clients to whom the respondent has provided affordable MFH project technical assistance during the past five years:

- 1–4 affordable housing project clients: 5 points
- 5–8 affordable housing project clients: 10 points
- 9 or more affordable housing project clients: 15 points

3. Proposed Outcomes

a. Respondent uses technical assistance resources to maximize the number of Section 515 projects assisted with grant funding. Scoring is based on the Statement of Work. Points will be awarded according to the proposed number of projects to be assisted under the grant:

- 1–5 projects: 5 points
- 6–10 projects: 10 points
- 11 or more projects: 15 points

b. Respondent uses technical assistance resources to increase the capacity of NPs and PHAs to complete transfers of Section 515 properties. Scoring is based on the Statement of Work. Points will be awarded according to the proposed number of NPs or PHAs to be served under the grant:

- 1–3 NPs/PHAs: 5 points
- 4–6 NPs/PHAs: 10 points
- 7 or more NPs/PHAs: 15 points

c. Respondent uses technical assistance resources to increase the capacity of NPs and PHAs to offer supportive services for tenants. Scoring is based on the Statement of Work. Points will be awarded according to the proposed number of projects assisted where new supportive services will be included:

- 1–3 projects: 5 points
- 4–6 projects: 10 points
- 7 or more projects: 15 points

4. Grant Administration

a. Respondent uses grant resources to maximize the funding available for direct program delivery to TA recipients. Points will be awarded according to the administrative costs as a percentage of grant funds used (not to exceed 20%):

- Administrative costs 10 percent to 20 percent: 5 points
- Administrative costs less than 10 percent: 10 points

b. Respondent has successful, verifiable experience managing service delivery or technical assistance through the grant lifecycle during the past five years. Experience must be demonstrated by submitting a list of past instances of managing service delivery or providing technical assistance. Experience considered for scoring purposes includes submitting timely requests for funding, meeting reporting requirements, and closing out awards. Points will be awarded according to the degree of experience:

- Previous experience as described with 1–4 grants: 5 points
- Previous experience as described with 5 or more grants: 10 points

5. Multifamily Housing Program Delivery Goals

All applications meeting the minimum scoring requirement of 50 points may be eligible for up to 15 additional points for proposals that offer TA services to support the MFH program delivery goals outlined in a. and b. below.

a. Geographic coverage (10 points): The respondent proposes to serve a geographic area that is underserved by other technical assistance providers or proposes to serve areas with a significant number of properties in need of preservation, as identified by the respondent and verified by the Agency.

b. Innovative TA service delivery models (5 points). The agency seeks to test a range of TA delivery models to assess the methods of TA delivery that are most effective to facilitate preservation; therefore, points may be awarded for respondents proposing a TA service delivery model that is different from other proposed models.

6. Administrator Discretionary Points

Respondents that meet the minimum scoring requirement may be considered for up to 15 discretionary scoring points (5 points for each category) as determined by the Administrator, which advance any or all of the Agency's three key funding priorities, provided that all other requirements set forth in this notice are otherwise met. The three key priorities are:

(i) Creating More and Better Markets: Assisting rural communities to recover economically through more and better market opportunities through improved infrastructure. (5 points): Applicants receive priority points if the project is located in or serving a rural community whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. The Distressed Communities Index provides a score between 1–100 for every community at the zip code level. The most distressed tier of the index are those communities with a score over 80. For additional information on data sources used for this priority determination, please download the Data Sources for Rural Development Priorities document at the following website: <https://www.rd.usda.gov/media/file/download/rd-ic-prioritiesdatasupplementalupdatedfy2024.pdf>. Note: US Territories are considered distressed and qualify for priority points. Provide a copy of the map showing the project is eligible to claim points.

(ii) Advancing Racial Justice, Place-Based Equity, and Opportunity: Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects (5 points). Applicant receives priority points if the project is located in or serving a community with score 0.75 or above on the CDC Social Vulnerability Index. Please use the Community Look-Up Map to look up a map or list to determine if your project qualifies for priority points. Provide a copy of the

map showing the project is eligible to claim points.

Applications from and benefiting a Rural Partner's Network's (RPN) community network will receive priority points ([rural.gov](https://www.rural.gov)) in applicable funding notices. Currently RPN Networks exist in Alaska, Arizona, Georgia, Kentucky, Mississippi, Nevada, New Mexico, North Carolina, Puerto Rico, West Virginia and Wisconsin. Please use the Community Look-Up map to determine if your project qualifies for priority points.

Applications from Federally Recognized Tribes, including Tribal instrumentalities and entities that are wholly owned by Tribes will receive priority points. Federally Recognized Tribes are classified as any Indian or Alaska Native tribe, band, nation, pueblo, village or community as defined by the Federally Recognized Indian Tribe List Act (List Act) of 1994 (Pub. L. 103–454). Please refer to the Bureau of Indian Affairs for the listing of Federally Recognized Tribes that was published on January 1, 2023, in the **Federal Register** [88 FR 2112].

Additionally, projects where at least 50 percent of the project beneficiaries are members of Federally Recognized Tribes, will receive priority points if applications from non-Tribal applicants include a Tribal Resolution of Consent from the Tribe or Tribes that the applicant is proposing to serve. For additional information on data sources used for this priority determination, please download the Data Sources for Rural Development Priorities document by using the following link: <https://www.rd.usda.gov/media/file/download/rd-ic-prioritiesdatasupplementalupdatedfy2024.pdf>. Note: US Territories are considered socially vulnerable and qualify for priority points.

(iii) Addressing Climate Change and Environmental Justice: Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities (5 points). Applicant can receive priority points through one of the three options listed below:

Option 1: Applicants will receive points if the project is located in or serves a Disadvantaged Community as defined by the Climate and Economic Justice Screening Tool (CEJST), from the White House Council on Environmental Quality (CEQ). CEJST is a tool to help Federal agencies identify disadvantaged communities that will benefit from programs included in the Justice40 initiative. Census tracts are considered disadvantaged if they meet the thresholds for at least one of the CEJST's eight (8) categories of burden: Climate,

Energy, Health, Housing, Legacy Pollution, Transportation, Water and Wastewater, or Workforce Development.

Option 2: Applicants will receive points if the project is located in or serves an Energy Community as defined by the Inflation Reduction Act (IRA). The IRA defines energy communities as:

- A “brownfield site” (as defined in certain subparagraphs of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)).
- A “metropolitan statistical area” or “non-metropolitan statistical area” that has (or had at any time after 2009). 0.17 percent or greater direct employment or 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas; and has an unemployment rate at or above the national average unemployment rate for the previous year.
- A census tract (or directly adjoining census tract) in which a coal mine has closed after 1999; or in which a coal-fired electric generating unit has been retired after 2009.

Option 3: Applicants will receive points by demonstrating through written narrative how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

Information on whether your project qualifies for priority points can be found at the following website: <https://www.rd.usda.gov/priority-points>. To determine if your project qualifies for priority points under Option 1 or Option 2, please use the Disadvantaged Community & Energy Community Look-Up Map on the following website: <https://www.rd.usda.gov/priority-points>. Provide a copy of the map showing the project is eligible to claim points.

The minimum score requirement for grants awarded under this funding opportunity is 50 points. Final scores are determined by the Agency. The Agency reserves the right to withhold the awarding of funds for applications that fail to meet the minimum required final score. Meeting the minimum scoring requirement and/or receiving priority funding points or discretionary points from the Administrator does not guarantee a funding award.

The Agency will notify all responding entities whether their application has been accepted or rejected and provide appeal rights under 7 CFR part 11, as appropriate.

Program Section B

Farm Labor Housing Technical Assistance Grant Program

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- A. Program Description
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- C. Eligibility Information
- D. Application and Submission Information
- E. Application Review Information

A. Program Description

The technical assistance grants authorized under this funding opportunity are for the purpose of encouraging farm labor housing development, repair, and preservation activities under Section 516(i) of the Housing Act of 1949, as amended (42 U.S.C. 1486(i)). RHS regulations for Section 514 and Section 516 FLH programs and provisions for FLH technical assistance grants are published at 7 CFR part 3560, subparts L and M. FLH grants are authorized under Section 516(i) of the Housing Act of 1949, as amended, 42 U.S.C. 1486(i), and implemented by 7 CFR part 3560.

The primary objective of this funding opportunity is to improve the overall quality of Section 514 FLH loan and Section 516 FLH grant application packages submitted to the Agency for funding consideration in areas determined to have unmet need and unsatisfied market demand for farm labor housing development, repair, and preservation activities, as identified by the respondent and verified by the Agency.

Eligible entities responding to this notice are expected to have knowledge, experience, and expertise in farm labor housing development, repair, and preservation activities; federal grant administration; and technical assistance program development, implementation, and delivery. In addition, eligible entities must possess the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a timely and cost-efficient manner within a 24-month grant performance period.

B. Federal Award Information

Type of Award: Grant
Fiscal Year (FY) Funds: 2024
Award Amounts: \$2 million.

C. Eligibility Information

(1) Respondent Eligibility

Eligibility for FLH Technical Assistance Grants is limited to qualified nonprofit organizations. Nonprofit organizations must meet the definition of nonprofit organization in 7 CFR 3560.11. Qualifying nonprofit

organizations include tribal housing nonprofits.

(2) Eligible Grant Activities

The primary work permitted under these FLH TA grant awards will focus on eligible nonprofit organizations delivering direct technical assistance advisory services to qualified FLH loan/grant applicants who lack the knowledge, experience and/or capacity to develop, package, and submit their own loan and grant dockets to the Agency for funding consideration. Grantees may assist FLH loan/grant applicants with analysis, negotiation, application, underwriting, and closing processes; and identifying and securing capital and operating funding from the Agency and/or other sources for the purpose of new construction, acquisition, repair and/or rehabilitation, and ongoing operations of the property, including the coordination and provision of supportive services for tenants.

Qualified applicants for Section 514 Off-FLH loans and Section 516 Off-FLH grants may include broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, community organizations, agencies or political subdivisions of State, Tribal or local Governments (such as housing authorities), and other eligible FLH organizations.

Qualified applicants for Section 514 On-Farm Labor Housing (On-FLH) loans must be farm owners, family farm partnerships, family farm corporations, or associations of farmers engaged in agricultural or aquacultural farming operations whose farming operations demonstrate a need for On-FLH and who will own the housing and operate it on a nonprofit basis.

Section 516 grants are not available for On-FLH.

Farm labor housing may be constructed in either urban or rural areas if need and demand for such housing is supported. However, respondents should concentrate their proposed technical assistance grant activities in areas identified as having unmet need and unsatisfied market demand for FLH development, repair, and preservation activities, as identified by the respondent and verified by the Agency.

(3) Eligible Costs

Costs will be limited to those allowed under 2 CFR part 200. Grantees may, with Agency concurrence and approval, utilize FLH TA grant funds for the following purposes: Conducting targeted outreach efforts to inform and recruit

potential FLH applicants; providing advisory services to eligible FLH applicants for conducting site searches, estimating construction costs, resolving planning, and zoning issues, and negotiating and executing property acquisitions; assisting applicants during the application development, packaging, submission, underwriting and closing processes; and for other transaction details that are considered part of the application process, such as financial analyses, Capital Needs Assessments (CNAs), appraisals, market surveys/studies, and other consultation, advisory and non-construction services. Grantees may request Agency approval on a case-by-case basis for costs not included in the list.

Grantees may also on a case-by-case basis, and with advance approval by the Agency, provide technical assistance to entities approved for FLH funding during the construction and rent-up/lease-up phases of development, and provide training to Agency-funded FLH projects to support successful long-term management of FLH properties.

(4) Ineligible Purposes/Costs

In addition to costs identified as unallowable by 2 CFR parts 200 and 400, grant funds cannot be used for the following:

(a) Construction (in any form) including building materials, labor, and costs or expenditures otherwise typically included as hard costs for actual construction.

(b) To reimburse grantees for technical assistance services provided to another nonprofit or public body applicant in the development and packaging of its loan/grant docket and project when those applicant entities have requested reimbursement for technical assistance expenses as part of their total project development cost (See 7 CFR 3560.553(c) and 7 CFR part 3560.53(o)(3)) (Duplication of service costs is not allowed).

(c) In counties with Agency-financed FLH properties currently operating under a “diminished need” occupancy waiver (7 CFR 3560.576(e)), which are listed on RD’s website at <https://www.rd.usda.gov/programs-services/multifamily-housing-programs/farm-labor-housing-technical-assistance-grants#to-apply>.

(d) When an identity of interest exists between the technical assistance provider (or any third-party entity acting on their behalf) and the loan/grant applicant. Identity of interest is defined in 7 CFR 3560.11.

D. Application and Submission Information

(1) Electronic Application Submissions

All materials must be submitted electronically as outlined above in Section D, Application and Submission Information in the General Section of this notice.

(2) Content and Format of Application Packages

In addition to the forms, certifications and assurances required of all respondents as outlined in the General Section of this notice, complete application packages for FLH TA Grants must also contain a written grant proposal that includes the following required information:

(a) Summary page, which must include the following:

1. Responding entity’s name, address, telephone number, and complete contact information for the entity’s main point of contact;
2. Responding entity’s Taxpayer Identification Number;
3. Grant Amount requested;
4. The State(s), area(s), and/or geographic region for which the application is being submitted; and
5. Responding entity’s Unique Entity Identifier (UEI) number required for registration in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b).

(b) Organizational Expertise and Experience Capabilities Statement. The responding entity must provide a capabilities statement describing overall organizational knowledge, demonstrated ability, and practical experience in developing, packaging, and submitting Section 514/516 development, repair, and preservation activity transactions for Agency funding consideration; developing, implementing, and delivering farm labor housing technical assistance programs; and managing Federal technical assistance grants throughout their lifecycle. In addition, respondents must demonstrate the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a cost-efficient and timely manner within the 24-month grant term. If the respondent intends to have other entities working on its behalf, those entities must be identified and their abilities to meet the stated eligibility requirements and experience in delivering approved technical assistance services must also be addressed.

(c) Narrative. The responding entity must include a written narrative describing its knowledge, demonstrated

ability, and practical experience in farm labor housing development, Federal grant administration, and technical assistance program development, implementation, and delivery. If the respondent intends to have other entities working on its behalf, those entities must be identified and their abilities to meet the stated eligibility requirements and experience in delivering approved technical assistance services must also be addressed.

To demonstrate overall organizational knowledge, experience, and expertise in farm labor housing development, repair, and preservation activities, respondents must identify by property name, type, and location, all FLH projects (both Section 514/516 and non-RHS) their organization has successfully developed, repaired and/or preserved in the past five (5) years. Please specify projects that continue to operate successfully to meet farm labor housing demand in the communities where they were developed. Respondents may also include a list of any successful, verifiable experience in completing or obtaining funding for other affordable Multifamily Housing projects during the past five years.

To demonstrate overall organizational knowledge, experience, and expertise in developing, implementing, and delivering farm labor housing technical assistance programs, respondents must identify by name and location the organizations and communities to which they have provided farm labor housing technical assistance services, the types of TA services provided to these entities, the sources of the technical assistance funding (including any leveraged funding sources), the number of Section 514/516 loan/grant packages developed and submitted for Agency funding consideration on behalf of these entities, and a description of how the respondent’s technical assistance services contributed to the development, repair, and/or preservation of farm labor housing that continues to operate successfully to meet farm labor housing demand in the community where it was developed. Include the outcomes/success ratios of all transactions/projects listed above that were initiated within the past five years (e.g., project approved for funding, project currently in development, project completed, etc.).

To demonstrate overall organizational knowledge, experience, and expertise in managing Federal technical assistance grants throughout their lifecycle (including submitting timely requests for reimbursements, meeting reporting requirements, and closing out awards), respondents must identify the total

number and type(s) of Federal technical assistance grants their organization has successfully administered within the past five years, including the awarding Federal agencies involved.

(d) Key Personnel and Staffing Plan. Proposals must include the resumes of all personnel who will perform key personnel services of (1) technical assistance delivery and (2) grant administration (CNAs, appraisals, and market surveys are not considered key personnel services). The staffing plan must describe each staff member's ability to perform the proposed activities and/or their experience in successfully managing service delivery of TA grants. The plan must include a staffing chart complete with name, job title, salary, hours, timelines, and descriptions of all proposed employee duties that will achieve the objectives of the grant program. If respondents intend to contract for any key personnel services from outside their organization (not to exceed the 20% limit), the qualifications of all entities acting on behalf of respondents must also be addressed.

(e) Statement of Work. Responding entities must submit a detailed SOW that includes the following requirements:

1. Introduction/overview with a description of the proposed plan to identify and provide advisory services to eligible individuals, groups and organizations applying for Section 514/516 FLH loans and grants in underserved market areas.

2. The organization's capabilities to execute the proposed plan within the prescribed 24-month grant period.

3. The organization's plan to identify and recruit qualified individuals, groups and organizations who lack the knowledge, experience and/or capacity to package and submit Section 514/516 applications for Agency funding consideration. The SOW must provide a projected number of Section 514 loan and Section 516 grant application packages the respondent intends to submit for Agency funding consideration during the 24-month grant period. The SOW should discuss how the respondent's existing FLH knowledge and expertise, in combination with statistical data analysis, were utilized in identifying potential loan/grant applicants and how those findings provided foundational context to their planning efforts. Respondents should also include a discussion of their organizational ability to effectively serve the targeted applicants based on key personnel, established timeframes, and budget projections. Please include the data

utilized to support the proposal, all of which must be current, relevant, and verifiable.

4. The organization's plan to identify areas with unmet need and unsatisfied market demand for FLH development, repair, and/or preservation activities. In determining the underserved areas to target for FLH TA services, respondents must consider the total number of farmworkers in the area, the number and percentage of farmworkers who are without adequate housing in the area and projected future housing demand in the area. Consultation with major employers of farm laborers and with farmworker organizations in each market area under consideration is strongly encouraged prior to determining which areas to target for services. The SOW should discuss how the respondent's existing FLH knowledge and expertise, in combination with statistical data analysis, were utilized in identifying underserved market areas and how those findings provided foundational context to their planning efforts. Also include a discussion of the respondent's organizational ability to effectively serve the targeted market areas based on key personnel, established timeframes, and budget projections. Respondents should include the data utilized to support their proposals, all of which must be current, relevant, and verifiable.

5. Types of proposed technical assistance and legal and/or financial services that will enable qualified applicants in underserved areas to submit successful Section 514/516 applications to the Agency within the prescribed 24-month grant period. Respondents must clearly explain the services to be provided directly by their organization and all services that will be provided by third parties. The responding entity must specify the State(s) and/or geographic regions in which they and any proposed third-party contractors, consultants or subrecipients will offer technical assistance services. Respondents must specify why each applicant and targeted service area needs the proposed technical assistance services.

6. A detailed budget justification that aligns with the key project tasks/activities and a grant funds usage projection that corresponds with a 24-month timeline for service delivery. The grant funds usage projection should illustrate direct and indirect administrative costs in dollars, and as a percentage of the technical assistance services provided (not to exceed 20%).

7. Additional strengths, qualifications, or capabilities not discussed above that

may enhance the respondent's capacity to deliver services under this grant.

E. Application Review Information

All application packages will be reviewed to determine eligibility and completeness. All eligible, complete applications will be evaluated and competitively scored using the Application Scoring Criteria outlined below. Points will be awarded only for factors that are well-documented in the application package and, in the opinion of the Agency, meet the objectives outlined in each of the evaluation criteria. References to external websites, publications and/or other information not submitted as part of the application package will not be reviewed. Therefore, full documentation and support of all criteria is encouraged.

The review process designed for this notice will evaluate the degree to which the application sets forth measurable realistic objectives that are consistent with this notice and can be completed within a 24-month grant term consistent with the application and processing guidance established by Agency regulations.

Application Scoring Criteria (Points Can Be Earned In All Sections)

1. Respondent Experience (RHS Section 514/516)

a. Respondent has successful, verifiable experience completing Section 514/516 transactions during the past five years. Experience must be demonstrated by submitting a list of past Section 514/516 transactions. To receive points, the respondent must have acted as the developer or technical assistance provider for the project and, at a minimum, must have a submitted application currently pending approval or closed with the Agency:

- 1–2 completed or pending Section 514/516 transactions: 10 points
- 3–5 completed or pending Section 514/516 transactions: 20 points
- 6–8 completed or pending Section 514/516 transactions: 30 points
- 9 or more completed or pending Section 514/516 transactions: 40 points

b. Respondent has successful, verifiable experience providing technical assistance to qualified borrowers in completing Section 514/516 transactions. Experience must be demonstrated by submitting a list of past instances of providing technical assistance. Points will be awarded according to the number of qualified borrowers to whom the respondent has provided Section 514/516 technical assistance during the past five years:

- 1–4 Section 514/516 borrowers provided with technical assistance: 10 points
- 5–8 Section 514/516 borrowers provided with technical assistance: 20 points
- 9 or more Section 514/516 borrowers provided with technical assistance: 30 points

2. Respondent Experience (Other/Non-RHS Affordable Multifamily Housing Programs)

a. Respondent has successful, verifiable experience completing or obtaining funding for non-RHS FLH or other affordable MFH projects during the past five years. Experience must be demonstrated by submitting a list of past project transactions. To receive points, the respondent must have acted as the developer or technical assistance provider for the project and, at a minimum, must have obtained funding approval:

- 1–3 non-RHS FLH or MFH transactions completed/obtained funding approval: 5 points
- 4–6 non-RHS FLH or MFH transactions completed/obtained funding approval: 10 points
- 7–9 non-RHS FLH or MFH transactions completed/obtained funding approval: 15 points
- 10 or more non-RHS FLH or MFH transactions completed/obtained funding approval: 20 points

b. Respondent has successful, verifiable experience providing technical assistance to non-RHS FLH or MFH borrowers. Experience must be demonstrated by submitting a list of past instances of providing technical assistance. Points will be awarded according to the number of non-RHS FLH or MFH borrowers to whom the respondent has provided technical assistance in the past five years:

- 1–4 non-RHS FLH or MFH borrowers assisted: 5 points
- 5–8 non-RHS FLH or MFH borrowers assisted: 10 points
- 9 or more non-RHS FLH or MFH borrowers assisted: 15 points

3. Proposed Outcomes

a. Respondent uses technical assistance resources to maximize the number of areas assisted (based on the proposed Statement of Work). Points will be awarded according to the proposed number of areas with unmet need/unsatisfied market demand targeted for services under the TA grant:

- 1–5 proposed market areas: 5 points
- 6–10 proposed market areas: 10 points
- 11 or more proposed market areas: 15 points

b. Respondent uses technical assistance resources to identify and assist qualified Section 514/516 applicants (based on the Statement of Work). Points will be awarded according to the proposed number of qualified 514/516 applicants to be served under the grant:

- 1–3 qualified Section 514/516 applicants: 5 points
- 4–6 qualified Section 514/516 applicants: 10 points
- 7 or more qualified Section 514/516 applicants: 15 points

c. Respondent uses technical assistance resources to increase the number of successful section 514/516 applications submitted for Agency funding consideration (based on the Statement of Work). Points will be awarded according to the proposed number of Section 514/516 loan/grant application packages to be submitted for Agency funding consideration during the 24-month grant period of performance:

- 1–5 application packages: 5 points
- 6–10 application packages: 10 points
- More than 10 packages: 15 points

d. Respondent uses technical assistance resources to increase the capacity of Section 514/516 owners to offer supportive services for tenants. Scoring is based on the Statement of Work. Points will be awarded according to the proposed number of 514/516 loan/grant application packages to be submitted for Agency funding that include new supportive services for tenants:

- 1–3 projects: 5 points
- 4–6 projects: 10 points
- 7 or more projects: 15 points

4. Grant Administration

a. Respondent uses grant resources to maximize the funding available for direct program delivery to TA recipients. Percentage of grant funds used for direct and indirect administrative costs (not to exceed 20% of total projected costs):

- Total Administrative costs 10% to 20%: 5 points
- Total Administrative Costs Less than 10%: 10 points

b. Respondent has successful, verifiable experience managing service delivery or technical assistance throughout the grant lifecycle during the past five years. Experience must be demonstrated by submitting a list of past instances of managing service delivery or providing technical assistance. Experience considered for scoring purposes includes submitting timely requests for funding, meeting

reporting requirements, and closing out awards. Points will be awarded according to the degree of experience:

- 1–4 grants successfully managed during the past five years: 5 points
- 5 or more grants successfully managed during the past five years: 10 points

5. FLH Program Delivery Goals

All applications meeting the minimum scoring requirement of 50 points may be eligible for up to 15 additional points for proposals that offer TA services to support the FLH program delivery goals outlined in a. and b. below.

a. Geographic coverage (10 points): Respondent proposes to serve geographic areas that are underserved by other technical assistance providers, as identified by the respondent and verified by the Agency.

b. Innovative TA service delivery models (5 points): The agency seeks to test a range of TA delivery models to assess the methods of TA delivery that are most effective to facilitate successful FLH development, repair, and preservation activities. Describe any supporting innovative delivery approaches associated with implementation of the outlined key personnel tasks, including contingencies for delivering TA services remotely/virtually in order to avoid service delays and disruptions.

6. Administrator Discretionary Points

Respondents meeting the minimum scoring requirements may be considered for up to 15 discretionary scoring points (5 points for each category) as determined by the Administrator, which advance any or all of the Agency's three key funding priorities, provided that all other requirements set forth in this notice are otherwise met. The three key priorities are:

(i) Creating More and Better Markets: Assisting rural communities to recover economically through more and better market opportunities through improved infrastructure (5 points). Applicants receive priority points if the project is located in or serving a rural community whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. The Distressed Communities Index provides a score between 1–100 for every community at the zip code level. The most distressed tier of the index are those communities with a score over 80. Please use the Distressed Communities Index Look-Up Map to determine if your project qualifies for priority points. Provide a copy of the map showing the project is eligible to claim points. For additional

information on data sources used for this priority determination, please download the Data Sources for Rural Development Priorities document at the following website: <https://www.rd.usda.gov/media/file/download/rd-ic-prioritiesdatasupplementalupdatedfy2024.pdf>. Note: US Territories are considered distressed and qualify for priority points. Provide a copy of the map showing the project is eligible to claim points.

(ii) Advancing Racial Justice, Place-Based Equity, and Opportunity: Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects (5 points). Applicant receives priority points if the project is located in or serving a community with a score of 0.75 or above on the CDC Social Vulnerability Index. Please use Community Look-Up Map to look up a map or list to determine if your project qualifies for priority points. Provide a copy of the map showing the project is eligible to claim points.

Applications from and benefiting a Rural Partner's Network's (RPN) community network will receive priority points (*rural.gov*) in applicable funding notices. Currently RPN Networks exist in Alaska, Arizona, Georgia, Kentucky, Mississippi, Nevada, New Mexico, North Carolina, Puerto Rico, West Virginia and Wisconsin. Please use the Community Look-Up map to determine if your project qualifies for priority points.

Applications from Federally Recognized Tribes, including Tribal instrumentalities and entities that are wholly owned by Tribes will receive priority points. Federally Recognized Tribes are classified as any Indian or Alaska Native tribe, band, nation, pueblo, village or community as defined by the Federally Recognized Indian Tribe List Act (List Act) of 1994 (Public Law 103-454). Please refer to the Bureau of Indian Affairs for the listing of Federally Recognized Tribes that was published on January 1, 2023 in the **Federal Register** [88 FR 2112].

Additionally, projects where at least 50 percent of the project beneficiaries are members of Federally Recognized Tribes will receive priority points if applications from non-Tribal applicants include a Tribal Resolution of Consent from the Tribe or Tribes that the applicant is proposing to serve. For additional information on data sources used for this priority determination, please download the Data Sources for Rural Development Priorities document by using the following link: <https://www.rd.usda.gov/media/file/download/rd-ic-prioritiesdatasupplemental>

updatedfy2024.pdf. Note: US Territories are considered socially vulnerable and qualify for priority points.

(iii) Addressing Climate Change and Environmental Justice: Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities (5 points). Applicants can receive priority points through one of the three options listed below:

Option 1: Applicants will receive points if the project is located in or serves a Disadvantaged Community as defined by the Climate and Economic Justice Screening Tool (CEJST), from the White House Council on Environmental Quality (CEQ). CEJST is a tool to help Federal agencies identify disadvantaged communities that will benefit from programs included in the Justice40 initiative. Census tracts are considered disadvantaged if they meet the thresholds for at least one of the CEJST's eight (8) categories of burden: Climate, Energy, Health, Housing, Legacy Pollution, Transportation, Water and Wastewater, or Workforce Development.

Option 2: Applicants will receive points if the project is located in or serves an Energy Community as defined by the Inflation Reduction Act (IRA). The IRA defines energy communities as:

- A "brownfield site" (as defined in certain subparagraphs of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)).
- A "metropolitan statistical area" or "non-metropolitan statistical area" that has (or had at any time after 2009).
- 0.17% or greater direct employment or 25% or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas; and has an unemployment rate at or above the national average unemployment rate for the previous year.
- A census tract (or directly adjoining census tract) in which a coal mine has closed after 1999; or in which a coal-fired electric generating unit has been retired after 2009.

Option 3: Applicants will receive points by demonstrating through written narrative how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

To determine if your project qualifies for priority points under Option 1 or Option 2, please use the Disadvantaged Community & Energy Community Look-Up Map. Provide a copy of the map showing the project is eligible to claim points.

The minimum score requirement for grants awarded under this funding opportunity is 50 points. Final scores are determined by the Agency. The Agency reserves the right to withhold the awarding of funds for applications that fail to meet the minimum required final score.

Meeting the minimum scoring requirements and/or receiving priority funding points or discretionary points from the Administrator does not guarantee a funding award.

The Agency will notify all responding entities whether their application has been accepted or rejected and provide appeal rights under 7 CFR part 11, as appropriate.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024-21033 Filed 9-16-24; 8:45 am]

BILLING CODE 3410-XV-P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, September 20, 2024, 10:00 a.m. EST.

ADDRESSES: Meeting to take place virtually and is open to the public via livestream on the Commission's YouTube page: <https://www.youtube.com/user/USCCR/videos>.

FOR FURTHER INFORMATION CONTACT: Joe Kim: 202-376-8371; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Government in Sunshine Act (5 U.S.C. 552b), the Commission on Civil Rights is holding a meeting to discuss the Commission's business for the month. This business meeting is open to the public. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, September 20, 2024, is <https://www.streamtext.net/player?event=USCCR>. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

I. Approval of Agenda

II. Business Meeting

A. Presentation by Virginia Advisory Committee Chair on Released Reports and Memorandum on

Police Oversight and Accountability

B. Presentation by Maryland Advisory

Committee Chair on Released Reports and Memorandum on Water Affordability in Maryland
C. Management and Operations
• Staff Director's Report

III. Adjourn Meeting

Dated: September 12, 2024.

Zakee Martin,

USCCR Special Assistant to the Staff Director.

[FR Doc. 2024–21247 Filed 9–13–24; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–23–2024]

Foreign-Trade Zone (FTZ) 207; Authorization of Production Activity; voestalpine High Performance Metals LLC; (Wire Rod); South Boston, Virginia

On May 15, 2024, voestalpine High Performance Metals submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 207E, in South Boston, Virginia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (89 FR 44959, May 22, 2024). On September 12, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: September 12, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–21090 Filed 9–16–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–22–2024]

Foreign-Trade Zone (FTZ) 12; Authorization of Production Activity; Uni Ag Group, LLC; (Bulk Premises); McAllen, Texas

On May 15, 2024, The McAllen Foreign Trade Zone Inc., grantee of FTZ 12, submitted a notification of proposed export production activity to the FTZ Board on behalf of Uni Ag Group, LLC, within FTZ 12 in McAllen, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (89 FR 44631, May 21, 2024). On September 12, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The export-only production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: September 12, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–21100 Filed 9–16–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam). The period of review (POR) is August 1, 2022, through July 31, 2023. Commerce preliminarily determines that the exporters under review did not sell subject merchandise at prices below normal value (NV) during the POR, and that eight exporters are eligible for separate rates. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 17, 2024.

FOR FURTHER INFORMATION CONTACT:

Javier Barrientos or Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2243 or (202) 482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2023, Commerce initiated an administrative review of the antidumping duty order on fish fillets

from Vietnam in accordance with 19 CFR 351.221(c)(1)(i) and section 751(a) of the Tariff Act of 1930, as amended (the Act).¹ This review covers eight exporters of the subject merchandise.² We selected two exporters, Bien Dong³ and Vinh Hoan,⁴ for individual examination as mandatory respondents.⁵ On April 29, 2024, Commerce extended the deadline for these preliminary results to August 30, 2024.⁶ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁷ The deadline for the preliminary results is now September 6, 2024.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁸ A list of the topics discussed in the Preliminary Decision Memorandum is included in Appendix I 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

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023) (*Initiation Notice*). Although the *Initiation Notice* listed 151 company/entity names, we are treating the majority of these companies as part of the Vietnam-wide entity, and we are preliminarily considering several other companies to be part of the same entity. Further, we are rescinding the review with respect to numerous companies.

² See Memorandum, “Respondent Selection,” dated January 8, 2021 (Respondent Selection Memorandum).

³ We are preliminarily considering Bien Dong Seafood Joint Stock Company and two affiliated companies, Bien Dong Hau Giang Seafood Joint Stock Company and Seavina Joint Stock Company, to be a single entity. See Memorandum, “Single-Entity Analysis for Bien Dong Seafood Company, Ltd. and Affiliated Companies,” dated September 6, 2024. Hereinafter, we collectively refer to these companies as Bien Dong.

⁴ As noted in the *Initiation Notice*, Vinh Hoan is a single entity comprised of: (1) Vinh Hoan Corporation; (2) Van Duc Food Export Joint Stock Company (also known as Van Duc); (3) Van Duc Tien Giang Food Export Company (also known as VDTG or Van Duc Tien Giang Food Exp. Co.); (4) Thanh Binh Dong Thap One Member Company Limited (also known as Thanh Binh Dong Thap or Thanh Binh Dong Thap Ltd.); and (5) Vinh Phuoc Food Company Limited (also known as Vinh Phuoc or VP Food).

⁵ See Respondent Selection Memorandum; see also Memorandum, “Selection of Second Mandatory Respondent,” dated April 30, 2024.

⁶ See Memorandum, “Extension of Deadline for Preliminary Results of the Antidumping Duty Administrative Review,” dated April 29, 2024.

⁷ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁸ See Memorandum, “Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam; 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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 products covered by this order are fish fillets from Vietnam. For a full description of the scope of the order, *see* the Preliminary Decision Memorandum.

Standing

Based on an analysis of information gathered from initial and supplemental questionnaires, we find that the evidence supports a determination that Maritime Products International and QMC Foods Inc. have standing in this segment of the proceeding to request administrative review as wholesalers of domestic like product pursuant to section 771(9)(C) of the Act. We find that the evidence on record does not support Luscious Seafood LLC's claim to be a wholesaler of domestic like product pursuant to section 771(9)(C) of the Act during the POR. For additional information regarding these findings, *see* the Preliminary Decision Memorandum and standing memoranda.⁹

Separate Rates

Commerce preliminarily determines that information placed on the record by mandatory respondents Bien Dong and Vinh Hoan, and six additional companies seeking a separate rate (*i.e.*, Can Tho Import Export Seafood Joint Stock Company, Dai Thanh Seafoods Company Limited, Dong A Seafood One Member Company Limited, HungCa 6 Corporation, Nam Viet Corporation, and NTSF Seafoods Joint Stock Company) demonstrates that these companies are preliminarily entitled to separate rate status. For additional information, *see* the Preliminary Decision Memorandum.

Vietnam-Wide Entity

The Vietnam-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because the only valid request for review of the Vietnam-wide entity was withdrawn, we are preliminarily rescinding our review of the entity; if this decision becomes final, the entity's rate (*i.e.*, \$2.39 per kilogram (kg)) will not be subject to change. With the exception of the eight companies

which established their eligibility for a separate rate, Commerce considers all companies currently under review to be part of the Vietnam-wide entity.¹⁰ For additional information, *see* the Preliminary Decision Memorandum and the "Dumping Margin for Exporters Not Selected for Individual Review" section below.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of the publication of the notice of initiation. In January 2024, the petitioners¹¹ timely withdrew their review request for the Vietnam-wide entity.¹² The only remaining review request for the Vietnam-wide entity is from Luscious Seafood. As noted above, we have preliminarily determined that Luscious Seafood was not a U.S. wholesaler of domestic like product during the POR, and, thus, it does not have standing to request an administrative review in this segment of the proceeding; accordingly, we are preliminarily rescinding our review of the Vietnam-wide entity because all other requests for review from interested parties have been withdrawn.

Further, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR subject to the antidumping duty order for which liquidation is suspended, Commerce may rescind an administrative review, in whole or only with respect to a particular exporter or producer.¹³ At the end of the administrative review, any suspended entries are liquidated at the assessment rate computed for the review period.¹⁴ Therefore, for an administrative review to be conducted, there must be a reviewable, suspended

entry to be liquidated at the newly calculated assessment rate.

On December 29, 2023, Commerce placed information from U.S. Customs and Border Protection (CBP) on the record, and notified all interested parties of its intent to rescind this review with respect to numerous companies because those companies had no reviewable, suspended entries of subject merchandise, and we invited parties to comment.¹⁵ As discussed in the Preliminary Decision Memorandum, we do not find that the comments/information submitted to the record undermines the validity of the CBP data. Accordingly, in the absence of suspended entries of subject merchandise during the POR for 12 companies/entities that currently have a separate rate for which this review was initiated, we are hereby rescinding this administrative review, in part, with respect to these companies, in accordance with 19 CFR 351.213(d)(3). *See* Appendix II.A for a list of the applicable companies.

Finally, we are rescinding this review with respect to one company whose only POR entry has already been individually examined in a recently-completed new shipper review¹⁶ in this proceeding. *See* Appendix II.B.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. We have calculated constructed export price in accordance with section 772 of the Act. Because Vietnam is a non-market economy country within the meaning of section 771(18) of the Act, we have calculated NV in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Dumping Margin for Exporters Not Selected for Individual Review

The Act and Commerce's regulations do not address the establishment of a rate to apply to exporters not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents that

¹⁰ *See* Appendix III.

¹¹ The petitioners are the Catfish Farmers of America and individual U.S. catfish processors America's Catch, Inc., Alabama Catfish, LLC d/b/a Harvest Select Catfish, Inc., Consolidated Catfish Companies, LLC d/b/a Country Select Catfish, Delta Pride Catfish, Inc., Guidry's Catfish, Inc., Heartland Catfish Company, Magnolia Processing, Inc. d/b/a Pride of the Pond, and Simmons Farm Raised Catfish, Inc.

¹² *See* Petitioners' Letter, "Partial Withdrawal of Request for Administrative Review of Antidumping Duty Order," dated January 17, 2024.

¹³ *See, e.g., Forged Steel Fittings from Taiwan: Rescission of Antidumping Duty Administrative Review; 2018–2019*, 85 FR 71317, 71318 (November 9, 2020); and *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Rescission of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 54084 (October 26, 2018).

¹⁴ *See* 19 CFR 351.212(b)(1).

¹⁵ *See* Memorandum, "Notice of Intent to Rescind," dated December 29, 2023.

¹⁶ *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Review; 2022–2023*, 89 FR 53043 (June 25, 2024).

⁹ *See* Memoranda, "Maritime Products International Standing to Request Review," dated concurrently with this notice; and "Luscious Seafood LLC's Standing to Request Review," dated concurrently with this notice.

are not individually examined in an administrative review. Section 735(c)(5)(A) of the Act provides that the all-others rate should be calculated by averaging the weighted-average dumping margins calculated for individually-examined respondents, excluding dumping margins that are zero, *de minimis*, or based entirely on facts available.¹⁷ However, if this method is not feasible, Commerce may use another reasonable method to

calculate the non-individually examined exporters' or producers' rates.¹⁸

Consistent with the Act and the SAA, we have preliminarily determined that a reasonable method for assigning a dumping margin to the non-individually examined separate-rate companies, under section 735(c)(5)(B) of the Act, is to assign the zero percent dumping margin calculated for the mandatory respondents. Accordingly, we assigned exporters that we did not individually

examine a dumping margin equal to Bien Dong and Vinh Hoan's dumping margin,¹⁹ consistent with Commerce's practice and section 735(c)(5)(A) of the Act.

Preliminary Results of Review

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist for the period August 1, 2022, through July 31, 2023:

Exporter	Weighted-average dumping margin (dollars per kilogram)
Bien Dong Seafood Co., Ltd./Bien Dong Hau Giang Seafood Joint Stock Company/Seavina Joint Stock Company	\$0.00
Vinh Hoan Corporation/Van Duc Food Export Joint Stock Company/Van Duc Tien Giang Food Export Company/Thanh Binh Dong Thap One Member Company Limited/Vinh Phuoc Food Company Limited	0.00
Can Tho Import-Export Seafood Joint Stock Company	* 0.00
Dai Thanh Seafoods Company Limited	* 0.00
Dong A Seafood One Member Co., Ltd	* 0.00
HungCa 6 Corporation	* 0.00
Nam Viet Corporation	* 0.00
NTSF Seafoods Joint Stock Company	* 0.00

* This rate is based on the rates calculated for the mandatory respondents in this review.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days of the date of publication of this notice.²⁰

In accordance with 19 CFR 351.309(c), case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.²¹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

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 briefs 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.²² 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 results in this administrative review. 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).²³

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, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any

participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Assessment Rates

Upon completion of the final results of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.212(b)(1), if the weighted-average dumping margin for each individually examined respondent 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 (or customer-specific) per-unit assessment rates by dividing the amount of dumping for reviewed sales to the importer or customer by the total sales quantity associated with those transactions. If either respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific or

¹⁷ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 873.

¹⁸ *Id.*

¹⁹ See Memoranda, "Preliminary Results Analysis Memorandum for the Vinh Hoan Corporation," dated concurrently with this notice; and "Preliminary Results Analysis Memorandum for

Bien Dong Seafood Joint Stock Company," dated concurrently with this notice.

²⁰ See 19 CFR 351.224(b).

²¹ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

²² We use the term "issue" here to describe an argument that Commerce would normally address

in a comment of the Issues and Decision Memorandum.

²³ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023).

customer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review, and for future deposits of estimated duties, where applicable.²⁴

For any exporter that was not selected for individual examination in this administrative review, but which qualified for a separate rate, Commerce will instruct, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise at the cash deposit rate determined for these companies in the final results of review. For any companies/entities for which we rescind this administrative review in the final results, Commerce will instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption.

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 (CIT), 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).

For the companies for which Commerce is rescinding this review at this time (*see* Appendix II.A), we will instruct CBP to assess antidumping duties at rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in the United States, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**. As noted above, if a timely summons is filed at the CIT, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse,

for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margins established in the final results of this review, except if the rate is *de minimis*, in which case the cash deposit rate will be zero; (2) for previously-examined Vietnamese and non-Vietnamese exporters not listed above that at the time of entry are eligible for a separate rate based on a prior completed segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate; (3) for all non-Vietnamese exporters of subject merchandise which at the time of entry do not have a separate rate, the cash deposit rate will be the rate applicable to the Vietnamese exporter that supplied the non-Vietnamese exporter; and (4) for all Vietnamese exporters of subject merchandise that have not been found to be entitled to a separate rate at the time of entry, the cash deposit rate will be that for the Vietnam-wide entity (*i.e.*, \$2.39 per kilogram). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

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, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

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 POR. 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.

Notification to Interested Parties

We are issuing and publishing the preliminary results of this review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: September 6, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Standing
- V. Rescission of Administrative Review, In Part
- VI. Discussion of the Methodology
- VII. Recommendation

Appendix II

Companies for Which Commerce Is Rescinding the Review

A. Companies With Separate Rates and No Entries

1. C.P. Vietnam Corporation
2. Can Tho Animal Fishery Products Processing Export Enterprise (also known as Cafatex Corporation, or Cafatex)
3. East Sea Seafoods LLC (also known as East Sea Seafoods Limited Liability Company, ESS LLC, ESS, ESS JVC, or East Sea Seafoods Joint Venture Co., Ltd.)
4. Fatifish Company Limited (also known as FATIFISH or FATIFISHCO or Fatfish Co., Ltd.)
5. GODACO Seafood Joint Stock Company (also known as GODACO, GODACO Seafood, GODACO SEAFOOD, GODACO SEAFOOD, or GODACO Seafood J.S.C.)
6. Green Farms Seafood Joint Stock Company (also known as Green Farms, Green Farms Seafood JSC, GreenFarm Seafoods Joint Stock Company, or Green Farms Seafoods Joint Stock Company)
7. Hai Huong Seafood Joint Stock Company (also known as HHFish, HH Fish, or Hai Huong Seafood)
8. Hung Vuong Corporation; Hung Vuong Joint Stock Company, HVC or HV Corp.; An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish, An Giang Fisheries Import and Export, An Giang Fisheries Import & Export Joint Stock Company); Asia Pangasius Company Limited (also known as ASIA); Europe Joint Stock Company (also known as Europe, Europe JSC or EJS CO.); Hung Vuong Ben Tre Seafood Processing Company Limited (also known as Ben Tre, HVBT, or HVBT Seafood Processing); Hung Vuong Mascato Company Limited (also known as Mascato); Hung Vuong—Sa Dec Co., Ltd. (also known as Sa Dec or Hung Vuong Sa Dec Company Limited); Hung Vuong—Vinh Long Co., Ltd. (also known as Vinh Long or Hung Vuong Vinh Long Company Limited)²⁵
9. I.D.I International Development and Investment Corporation (also known as IDI, International Development & Investment Corporation, International Development and Investment Corporation, or IDI International

²⁴ See section 751(a)(2)(C) of the Act.

- Development & Investment Corporation)
10. Loc Kim Chi Seafood Joint Stock Company (also known as Loc Kim Chi)
 11. QVD Food Co., Ltd.; QVD Dong Thap Food Co., Ltd. (also known as Dong Thap or QVD DT); Thuan Hung Co., Ltd. (also known as THUFICO)
 12. Vinh Quang Fisheries Corporation (also known as Vinh Quang, Vinh Quang Fisheries Corp., Vinh Quang Fisheries Joint Stock Company, or Vinh Quang Fisheries Co., Ltd.)

B. Company Covered by a Concurrent/ Completed New Shipper Review

1. Co May Imp. Exp. Co.

Appendix III

Companies Treated as Part of the Vietnam-Wide Entity

1. An Chau Co., Ltd.
2. An Giang Agriculture and Food Import-Export Joint Stock Company (also known as Aflix or An Giang Agriculture and Foods Import-Export Joint Stock Company).
3. An Hai Fishery Ltd. Co.
4. An My Fish Joint Stock Company (also known as Anmyfish, Anmyfishco or An My Fish Joint Stock).
5. An Phat Import-Export Seafood Co., Ltd. (also known as An Phat Seafood Co. Ltd. or An Phat Seafood, Co., Ltd.).
6. An Phu Seafood Corp. (also known as ASEAFood or An Phu Seafood Corp.).
7. Anchor Seafood Corp.
8. Anh Vu Seafoods Corporation.
9. Anvifish Joint Stock Company (also known as Anvifish, Anvifish JSC, or Anvifish Co., Ltd.).
10. Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish).
11. Basa Joint Stock Company (also known as BASACO).
12. Ben Tre Aquaproduct Import and Export Joint Stock Company (also known as Bentre Aquaproduct, Bentre Aquaproduct Import & Export Joint Stock Company or Aquatex Bentre).
13. Bentre Forestry and Aquaproduct Import Export Joint Stock Company (also known as Bentre Forestry and Aquaproduct Import and Export Joint Stock Company, Ben Tre Forestry and Aquaproduct Import-Export Company, Ben Tre Forestry Aquaproduct Import-Export Company, Ben Tre Frozen Aquaproduct Export Company or Faquimex).
14. Bentre Seafood Jsc.
15. Binh An Seafood Joint Stock Company (also known as Binh An or Binh An Seafood Joint Stock Co.).
16. Binh Dinh Fisheries Joint Stock.
17. Binh Dinh Garment Joint Stock Co.
18. Binh Dinh Import Export Company (also known as Binh Dinh Import Export Joint Stock Company, or Binh Dinh).
19. Binh Phu Seafood Co. Ltd.
20. Ca Mau Frozen Seafood Processing Import Export Corporation.
21. Cadovimex II Seafood Import-Export and Processing Joint Stock Company (also known as Cadovimex II, Cadovimex II Seafood Import Export and Processing Joint Stock Company, or Cadovimex II Seafood Import-Export).
22. Cantho Imp. Exp. Seafood.
23. Cantho Import Export Fishery Limited.
24. Cavina Seafood Joint Stock Company (also known as Cavina Fish or Cavina Seafood Jsc).
25. Cds Overseas Vietnam Co., Ltd.
26. Colorado Boxed Beef Company (also known as CBBC).
27. Coral Triangle Processors (dba Mowi Vietnam Co., Limited (Dong Nai)).
28. Cuu Long Fish Import-Export Corporation (also known as CL Panga Fish or Cuu Long Fish Imp. Exp. Corporation).
29. Cuu Long Fish Joint Stock Company (also known as CL-Fish, CL-FISH CORP, or Cuu Long Fish Joint Stock Company).
30. Cuu Long Seapro.
31. Da Nang Seaproducts Import-Export Corporation (also known as SEADANANG, Da Nang or Da Nang Seaproducts Import/Export Corp.).
32. Dai Tien Vinh Co., Ltd.
33. Dong Phuong Co., Ltd.
34. Dong Phuong Import Export Seafood Company Limited (also known as Dong Phuong Export Seafood Limited, Dong Phuong Seafood Company Limited, or aFishDeal).
35. Dragonwaves Frozen Food Factory Co., Ltd.
36. Europe Trading Co., Ltd.
37. GF Seafood Corp.
38. Gia Minh Co., Ltd.
39. Go Dang An Hiep One Member Limited Company.
40. Go Dang Ben Tre One Member Limited Liability Company.
41. Gold Future Imp. Exp.
42. Gold Future Imp. Exp. Development Co., Ltd.
43. Golden Quality Seafood Corporation (also known as Golden Quality, GoldenQuality, GOLDENQUALITY, or GoldenQuality Seafood Corporation).
44. GreenFeed Vietnam Corporation.
45. Ha Noi Can Tho Seafood Jsc.
46. Hai Thuan Nam Co., Ltd.
47. Hai Trieu Co., Ltd.
48. Hapag Lloyd (America) Inc.
49. Hasa Seafood Corp. (Hasaco).
50. Hiep Thanh Seafood Joint Stock Company (also known as Hiep Thanh or Hiep Thanh Seafood Joint Stock Co.).
51. Hoa Phat Seafood Import-Export and Processing J.S.C. (also known as HOPAFISH, Hoa Phat Seafood Import-Export and Processing Joint Stock Company, Hoa Phat Seafood Import-Export and Processing JSC, or Hoa Phat Seafood Imp. Exp. And Processing).
52. Hoang Long Seafood Processing Company Limited (also known as HLS, Hoang Long, Hoang Long Seafood, HoangLong Seafood, or Hoang Long Seafood Processing Co., Ltd.).
53. Hogiya Seafoods Inc.
54. Hong Hai International.
55. Hong Ngoc Seafood Co., Ltd.
56. Hung Phuc Thinh Food Jsc.
57. Hung Vuong Seafood Joint Stock Company.
58. Hung Vuong.
59. Hung Vuong—Mien Tay Aquaculture Corporation (HVMT or Hung Vuong Mien Tay Aquaculture Joint Stock Company).
60. Hungca Co., Ltd.
61. I.D.I International Development And.
62. Indian Ocean One Member Company Limited (also known as Indian Ocean Co., Ltd.).
63. Jk Fish Jsc.
64. Lian Heng Trading Co. Ltd. (also known as Lian Heng, Lian Heng Trading, Lian Heng Investment Co. Ltd., or Lian Heng Investment).
65. Mechanics Construction And Foodstuff.
66. Mekong Seafood Connection Co., Ltd.
67. Minh Phu Hau Giang Seafood Corp.
68. Minh Phu Seafood Corp.
69. Minh Qui Seafood Co., Ltd.
70. Nam Phuong Seafood Co., Ltd. (also known as Nam Phuong, NAFISHCO, Nam Phuong Seafood, or Nam Phuong Seafood Company Ltd.).
71. New Food Import, Inc.
72. Ngoc Ha Co. Ltd. Food Processing and Trading (also known as Ngoc Ha or Ngoc Ha Co., Ltd. Foods Processing and Trading).
73. Ngoc Tri Seafood Joint Stock.
74. Nguyen Tran Seafood Company (also known as Nguyen Tran J-S Co.).
75. Nha Trang Seafoods, Inc. (also known as Nha Trang Seafoods-F89, Nha Trang Seafoods, or Nha Trang Seaproduct Company).
76. NTACO Corporation (also known as NTACO or NTACO Corp.).
77. Pecheries Oceanic Fisheries Inc.
78. Phi Long Food Manufacturing Co. Ltd.
79. Phu Thanh Co., Ltd.
80. Phu Thanh Hai Co. Ltd. (also known as PTH Seafood).
81. Phuc Tam Loi Fisheries Imp.
82. Phuong Ngoc Cai Be Ltd. Liability.
83. PREFCO Distribution, LLC.
84. Pufong Trading And Service Co.
85. QMC Foods, Inc.
86. Qn Seafood Co., Ltd.
87. Quang Minh Seafood Company Limited (also known as Quang Minh, Quang Minh Seafood Co., Ltd., or Quang Minh Seafood Co.).
88. Quirch Foods, LLC.
89. Riptide Foods.
90. Saigon-Mekong Fishery Co., Ltd. (also known as SAMEFICO or Saigon Mekong Fishery Co., Ltd.).
91. Seafood Joint Stock Company No. 4 (also known as SEAPRIEXCO No. 4).
92. Seafood Joint Stock Company No. 4 Branch Dongtam Fisheries Processing Company (also known as DOTASEAFOODCO or Seafood Joint Stock Company No. 4—Branch Dong Tam Fisheries Processing Company).
93. Seagate Logistics Co., Ltd.
94. Sobi Co., Ltd.
95. Song Bien Co., Ltd.
96. Southern Fishery Industries Company, Ltd. (also known as South Vina, South Vina Co., Ltd., Southern Fishery Industries Co., Ltd., Southern Fisheries Industries Company, Ltd., or Southern Fisheries Industries Company Limited).
97. Sunrise Corporation.
98. Tam Le Food Co., Ltd.
99. Tan Thanh Loi Frozen Food Co., Ltd.
100. TG Fishery Holdings Corporation (also known as TG or Tg Fishery Holdings

- Corp.).
101. Thanh Dat Food Service And Trading.
 102. Thanh Hung Co., Ltd. (also known as Thanh Hung Frozen Seafood Processing Import Export Co., Ltd. or Thanh Hung).
 103. Thanh Phong Fisheries Corp.
 104. The Great Fish Company, LLC.
 105. Thien Ma Seafood Co., Ltd. (also known as THIMACO, Thien Ma, Thien Ma Seafood Company, Ltd., or Thien Ma Seafoods Co., Ltd.).
 106. Thinh Hung Co., Ltd.
 107. Thuan An Production Trading and Service Co., Ltd. (also known as TAFISHCO, Thuan An Production Trading and Services Co., Ltd., or Thuan An Production Trading & Service Co., Ltd.).
 108. Thuan Nhan Phat Co., Ltd.
 109. Thuan Phuoc Seafoods and Trading Corporation.
 110. To Chau Joint Stock Company (also known as TOCHAU, TOCHAU JSC, or TOCHAU Joint Stock Company).
 111. Tran Thai Food Joint Stock.
 112. Trang Thuy Seafood Co., Ltd.
 113. Trinity Vietnam Co., Ltd.
 114. Trong Nhan Seafood Co., Ltd.
 115. Truong Phat Seafood Jsc.
 116. Van Y Corp.
 117. Van.
 118. Viet Hai Seafood Company Limited (also known as Viet Hai, Viet Hai Seafood Co., Ltd., Viet Hai Seafood Co., Vietnam Fish-One Co., Ltd., or Fish One).
 119. Viet Long Seafood Co., Ltd.
 120. Viet Phat Aquatic Products Co., Ltd.
 121. Viet Phu Foods & Fish Co., Ltd.
 122. Viet Phu Foods and Fish Corporation (also known as Vietphu, Viet Phu, Viet Phu Food and Fish Corporation, or Viet Phu Food & Fish Corporation).
 123. Viet World Co., Ltd.
 124. Vietnam Seaproducts Joint Stock Company (also known as Seaprodex or Vietnam Seafood Corporation—Joint Stock Company).
 125. Vif Seafood Factory
 126. Vinh Long Import-Export Company (also known as Vinh Long, Imex Cuu Long, Vinh Long Import/Export Company).

[FR Doc. 2024–21088 Filed 9–16–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

State University of New York at Stony Brook University, et al.; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). On August 9, 2024, the Department of Commerce published a notice in the **Federal Register** requesting public comment on whether instruments of equivalent scientific

value, for the purposes for which the instruments identified in the docket(s) below are intended to be used, are being manufactured in the United States. See Application(s) for Duty-Free Entry of Scientific Instruments, 89 FR 65323–24, August 9, 2024 (Notice). We received no public comments.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as these are intended to be used, that were being manufactured in the United States at the time of order.

Docket Number: 24–020. Applicant: State University of New York at Stony Brook University, 100 Nicolls Road, Stony Brook, NY 11794–5230. Instrument: Miniature 2-Photon Microscope System. Manufacturer: Nanjing Transcend Vivoscope Bio-Technology Co., Ltd., China. Intended Use: The instrument is intended to be used for neuroscientists to enable them to study brain activity with unprecedented detail and flexibility. Acquiring a miniature two-photon scope for campus use would significantly advance neuroscience research at Stony Brook.

Docket Number: 24–021. Applicant: Washington State University, Procurement and Contract Services, French Administration Building 240, P.O. Box 64120, Pullman, WA 99164–1020. Instrument: Optical Lens, Polarized Beamsplitter, Broadband Dielectric Mirror, Non-polarizing Beamsplitter, Zero-order half and quarter. Manufacturer: Fuzhou Sunlight Technology, Co., Ltd., People's Republic of China. Intended Use: The instrument is intended to be used to study quantum phenomena, such as: Quantum memory, quantum computing, and quantum networking, and to investigate the quantum properties of such neutral atom array. This device could also be used for educational purposes. For graduate students' education (Physics 800 Doctoral Research) and undergraduate students' educations (Physics 499 Special Projects), students can learn how to operate lasers and MOT system to trap neutral atoms and form atom arrays and design optical layout. These tools will be commonly used in most quantum optics labs.

Docket Number: 24–022. Applicant: Columbia University, Department of Physics, Pupin Hall, 538 W 120 Street, New York, NY 10027. Instrument: Fiber Laser. Manufacturer: PreciLasers, China. Intended Use: The instrument is intended to be used for the production of an ultracold and trapped gas of Strontium–88 atoms for a Sr₂ molecular clock experiment. This molecular clock

will be used to perform precise measurements of molecular vibrational energies, enabling the study of physics beyond the standard model. Learning to use lasers is an important part of the training of graduate students pursuing Ph.D.s—through using the lasers; they learn laser physics and practical aspects of operating and maintaining lasers.

Docket Number: 24–023. Applicant: Instrument: University of Colorado JILA Department, 3300 Walnut Street, Unit B, JILA Building, Room S/175, Boulder, CO 80301. Instrument: Fiber Laser. Manufacturer: Shanghai Precilasers Technology Co., Ltd., China. Intended Use: The instrument is intended to be used for the JILA eEDM Generation III experiment designed to explore physics beyond the Standard Model by precisely measuring the electron electric dipole moment (eEDM) using a tabletop setup. The approach involves measuring the eEDM within a molecular ion, which enhances the eEDM effect for better accuracy. The fiber laser we intend to acquire will provide the necessary 300 mW power output for both transitions.

Docket Number: 24–024. Applicant: Columbia University, Department of Physics, Pupin Hall, 538 W 120th Street, New York, NY 10027. Instrument: Fiber Laser. Manufacturer: PreciLasers, China. Intended Use: The instrument is intended to be used for the production of an ultracold and trapped gas of Strontium–88 atoms for a Sr₂ molecular clock experiment. This molecular clock will be used to perform precise measurements of molecular vibrational energies, enabling the study of physics beyond the Standard Model. Also, the instrument will be used to make sensitive measurements of the properties of the Sr₂ molecule in an optical lattice. In particular, looking for evidence of non-Newtonian gravity at Angstrom range, a possible indication of new physics required to explain the nature of dark matter in the universe.

Docket Number: 24–025. Applicant: Trustees of Boston College, 140 Commonwealth Avenue, Higgins Hall 335, Chestnut Hill, MA 02467. Instrument: Atomic Force Microscope Tip Containing Single Nitrogen Vacancy Centers. Manufacturer: QZabre Limited, Switzerland. Intended Use: The instrument is intended to be used in research projects in quantum information science and quantum materials. The diamond atomic force microscope tip (AFM) tip with single nitrogen vacancy (NV) centers will allow us to obtain the highest spatial resolution imaging of magnetic stray fields and current distributions. The instruments will be conducted by graduate students enrolled in doctoral

program at Boston College. This will significantly benefit their training on cutting-edge quantum sensing techniques and allow them to join the US STEM workforce upon graduation.

Dated: September 12, 2024.

Gregory W. Campbell,

*Director, Subsidies and Economic Analysts,
Enforcement and Compliance.*

[FR Doc. 2024–21107 Filed 9–16–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–807]

Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 29, 2024, the U.S. Department of Commerce (Commerce) published the initiation and preliminary results of the changed circumstances review (CCR) of the antidumping duty (AD) order on circular welded carbon-quality steel pipe (CWP) from the United Arab Emirates (UAE). For these final results, Commerce continues to find that Universal Tube and Pipe Industries FZE (Universal Tube and Pipe), is the successor-in-interest to Universal Tube and Plastic Industries Limited (UTP). Additionally, we determine that Universal Tube and Pipe should be assigned UTP's cash deposit rate for purposes of the AD order.

DATES: Applicable September 17, 2024.

FOR FURTHER INFORMATION CONTACT: Genevieve Coen, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3251.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2024, Commerce published the initiation and preliminary results of this expedited CCR, finding that Universal Tube and Pipe is the successor-in-interest to UTP, and should be assigned the same AD cash deposit rate assigned to UTP in the AD order on CWP from the UAE and provided all interested parties with an opportunity to comment.¹ No interested party

submitted comments on the *Initiation and Preliminary Results* or requested a hearing. Accordingly, the final results remain unchanged from the *Initiation and Preliminary Results*.

Scope of the Order

The products covered by the *Order* are CWP from the UAE. For a complete description of the scope of the *Order*, see the *Initiation and Preliminary Results*.

Final Results of CCR

For the reasons stated in the *Initiation and Preliminary Results*, and because we received no comments from interested parties to the contrary, Commerce continues to find Universal Tube and Pipe is the successor-in-interest to UTP for purposes of the AD order on CWP from the UAE. As a result of this determination and consistent with our practice, we find that Universal Tube and Pipe should receive the AD cash deposit rate previously assigned to UTP with respect to entries of subject merchandise in the above-noted proceeding. As there are no changes from the *Initiation and Preliminary Results*, there is no decision memorandum accompanying this notice and we are adopting the determination in the *Initiation and Preliminary Results* as the final results of this CCR.

Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced or exported by Universal Tube and Pipe and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at 1.00 percent, which is the current AD cash deposit rate for UTP.² These cash deposit requirements shall remain in effect until further notice.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Changed Circumstances Review, 89 FR 60863 (July 29, 2024) (*Initiation and Preliminary Results*).

² See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review*; 2021–2022, 89 FR 57128, 57130 (July 12, 2024).

Notification to Interested Parties

We are issuing this determination and publishing this notice in accordance with section 751(b)(1) and 777(i)(1) and (2) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e), 351.221(b), and 351.221(c)(3).

Dated: September 10, 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.

[FR Doc. 2024–21082 Filed 9–16–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–168]

Certain Alkyl Phosphate Esters From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable September 17, 2024.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973 and (202) 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 2024, the U.S. Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of certain alkyl phosphate esters from the People's Republic of China.¹ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.² Currently, the preliminary determination is due no later than October 7, 2024.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires

¹ See *Certain Alkyl Phosphate Esters from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation: Initiation of Less-Than-Fair-Value Investigation*, 89 FR 43801 (May 20, 2024).

² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

¹ See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Notice of Initiation and Preliminary Results of Antidumping Duty*

Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On September 6, 2024, the petitioner³ submitted a timely request that Commerce postpone the preliminary determination in the LTFV investigation.⁴ The petitioner stated that it requested postponement due to the “size and complexity of the investigation.”⁵

For the reason stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days (*i.e.*, 190 days after the date on which this investigation was initiated). As a result, Commerce will issue its preliminary determination no later than November 26, 2024. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: September 11, 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.

[FR Doc. 2024–21087 Filed 9–16–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE267]

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 (Pacific Council) will convene a joint meeting of the Salmon Technical Team (STT) and the Scientific and Statistical Committee's Salmon Subcommittee (SSC–SC). The Model Evaluation Workgroup (MEW) and Sacramento River Fall Chinook Workgroup (SRWG) may also contribute and participate in this meeting.

DATES: The online meeting will be held Friday, October 4, 2024, from 9:30 a.m. until 4:30 p.m., Pacific daylight time, or until business for the day has been 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: Angela Forristall, Staff Officer, Pacific Council; telephone: (503) 820–2419.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to conduct a salmon methodology review to discuss and review proposed changes to analytical methods used in salmon management. Topics will be proposed at the September 2024 Pacific Council meeting. If time allows additional topics may be discussed, including but not limited to, future Pacific Council agenda items and salmon-related topics of interest to the STT and SSC–SC. The STT and SSC–SC will report on the outcomes of the meeting to the Pacific Council at their November 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: September 12, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–21127 Filed 9–16–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Queen Conch Reporting Form

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 18, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at NOAA.PRA@noaa.gov. Please reference OMB Control Number 0648–XXXX in the subject line of your comments. All comments received are

³ The petitioner is ICL–IP America, Inc.

⁴ See Petitioner's Letter, “Request to Extend Antidumping Preliminary Determination,” dated September 6, 2024.

⁵ *Id.*

part of the public record and will generally be posted on <https://www.regulations.gov> without change. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Orian Tzadik, Natural Resource Specialist, National Marine Fisheries Service, Southeast Regional Office, USCG Air station Borinquen, 260 Guard Road, Aguadilla, PR 00603, (813)-906-0353, and Orain.Tzadik@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new collection of information. The Protected Resources Division of the National Marine Fisheries Service's Southeast Regional Office will be collecting Queen Conch (*strombus gigas*) data under the authority of the Endangered Species Act of 1973, as amended. Data will be requested via an online form that will be provided to action agencies during the ESA Section 7 consultation process. Federal action agencies will ensure a survey is conducted as a condition of their permitted projects. Collection of monitoring data is consistent with ESA Section 7 consultation requirements, to ensure accurate reporting of "take" for listed species. The required monitoring data collected through this form will be used to determine if nearshore development projects are resulting in unanticipated "take" of queen conch, and cumulatively affecting species distribution and habitat use within the species' range in the southeastern United States. Data may also be important for estimating the population of queen conch in various locations of its range.

II. Method of Collection

Data will be collected via an online form that will be shared by the National Marine Fisheries Service.

III. Data

OMB Control Number: 0648-XXXX.
Form Number(s): None.

Type of Review: Regular submission.
This is a new information collection.

Affected Public: Businesses or other for-profit organizations conducting in-water construction activities under federal permits within the range of Queen Conch in the southeastern United States.

Estimated Number of Respondents: 200.

Estimated Time per Response: 9 minutes.

Estimated Total Annual Burden Hours: 33 hours.

Estimated Total Annual Cost to Public: \$0 to complete survey.

Respondent's Obligation: Mandatory, as condition of federally permitted activity.

Legal Authority: Endangered Species Act of 1973, as amended.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024-21067 Filed 9-16-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE254]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 92 Atlantic Blueline Tilefish Life History Topical Working Group (LH-TWG) Webinar I.

SUMMARY: The SEDAR 92 assessment of the Atlantic stock of blueline tilefish will consist of a series of assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 92 Atlantic Blueline Tilefish LH-TWG Webinar I has been scheduled for October 3, 2024, from 11 a.m. to 1 p.m., eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at Julie.Neer@safmc.net.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; www.sedarweb.org.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571-4366; email: Julie.Neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses

of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 92 Atlantic Blueline Tilefish LH-TWG: the Work Group will discuss available life history data sources and make recommendation for their use in the assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) 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

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 12, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–21126 Filed 9–16–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Advisory Committee for Excellence in Space (ACES); Notice of Meeting

AGENCY: Office of Space Commerce (OSC), National Oceanic and

Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the NOAA Office of Space Commerce announces the inaugural meeting of the Advisory Committee for Excellence in Space (ACES).

DATES: October 3, 2024, from 9 a.m. to 5 p.m. EDT.

ADDRESSES: U.S. Department of Commerce, Herbert C. Hoover Building—Commerce Research Library, 1401 Constitution Ave NW, Washington, DC 20230. In-person participation is limited to ACES members and DOC personnel. Public participation will occur via a hybrid format. The link for webinar registration will be posted, when available, on the ACES website, <http://www.space.commerce.gov/aces>.

FOR FURTHER INFORMATION CONTACT: Jason Y. Kim, Designated Federal Officer, Advisory Committee for Excellence in Space (ACES), NOAA Office of Space Commerce, U.S. Department of Commerce, Washington, DC 20230. Telephone: 202–482–5827. Email: space.commerce@noaa.gov.

SUPPLEMENTARY INFORMATION: ACES provide advice and recommendations to the NOAA Under Secretary or OSC Director on matters relating to OSC's statutory purview. Originally established in 2002 as the Advisory Committee on Commercial Remote Sensing, ACES was rescoped and rechartered in 2024 to address a broader range of commercial space issues.

Agenda: The meeting will include discussions on topics pertinent to commercial space policy, regulation, and operational mission support, including:

- Licensing of private remote sensing space systems
- Authorization and supervision of novel space missions
- Space sustainability, including space situational awareness
- International commercial space partnerships
- Expanding applications and markets for commercial space capabilities

A detailed agenda with meeting materials will be available closer to the meeting date on the ACES website, <http://www.space.commerce.gov/aces>.

Written Comments: Members of the public may submit written comments to ACES at space.commerce@noaa.gov by September 27, 2024.

Special Accommodations: Requests for special accommodations may be directed to the Designated Federal

Officer no later than September 27, 2024.

Dated: September 11, 2024.

Richard DalBello,

Director of Office of Space Commerce.

[FR Doc. 2024–21105 Filed 9–16–24; 8:45 am]

BILLING CODE 3510–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2024–0026]

2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence

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

ACTION: Examination guidance; extension of comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO) is extending the comment period for the notice titled “2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence” that was published in the **Federal Register** on July 17, 2024. The notice's comment period is extended until October 16, 2024. This will be the only extension of the comment period.

DATES: The comment period for the notice published July 17, 2024 at 89 FR 58128 is extended until October 16, 2024.

ADDRESSES: Comments must be submitted through the Federal eRulemaking Portal at www.regulations.gov. To submit comments via the portal, enter docket number PTO–P–2024–0026 on the homepage and select “Search.” The site will provide a search results page listing all documents associated with this docket. Find a reference to this document and select the “Comment” icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in Adobe® portable document format (PDF) or Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information at

the **FOR FURTHER INFORMATION CONTACT** section of this Notice for special instructions.

FOR FURTHER INFORMATION CONTACT:

Carolyn Kosowski, Senior Legal Advisor, at 571-272-7688; Nalini Mummalaneni, Senior Legal Advisor, at 571-270-1647; or Matthew Sked, Senior Legal Advisor, at 571-272-7627, all with the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents.

SUPPLEMENTARY INFORMATION: On July 17, 2024, the USPTO published a notice on patent subject matter eligibility titled “2024 Guidance Update on Patent Subject Matter Eligibility, Including on Artificial Intelligence” to address innovation in critical and emerging technologies, especially artificial intelligence. See 89 FR 58128.

The USPTO is extending the written comment period until October 16, 2024, to ensure that all stakeholders have a sufficient opportunity to submit comments on the examination guidance presented in the July 17, 2024, notice. The USPTO is extending the written comment period only once.

Katherine K. Vidal,

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

[FR Doc. 2024-21085 Filed 9-16-24; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2021-0042]

Extension of the Patent Trial and Appeal Board Motion To Amend Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is extending the Motion to Amend (MTA) pilot program, initiated on March 15, 2019, and previously extended up to September 16, 2024. The MTA pilot program provides additional options for a patent owner who files an MTA before the Patent Trial and Appeal Board (PTAB). In particular, the MTA pilot program provides a patent owner who files an MTA with options to request preliminary guidance from the PTAB on the MTA and to file a revised MTA. The MTA pilot program also provides timelines for briefing to accommodate these options.

DATES: *Applicable Date:* September 17, 2024. *Duration:* The MTA pilot program will run until March 31, 2025, or earlier if replaced by a permanent program after notice-and-comment rulemaking. The USPTO may extend the MTA pilot program (with or without modification) on either a temporary or a permanent basis or may discontinue the MTA pilot program, after that date.

FOR FURTHER INFORMATION CONTACT:

Miriam L. Quinn, Acting Vice Chief Administrative Patent Judge, or Melissa Haapala, Vice Chief Administrative Patent Judge at 571-272-9797 (*Miriam.Quinn@uspto.gov* or *Melissa.haapala@uspto.gov*, respectively).

SUPPLEMENTARY INFORMATION: A patent owner in an America Invents Act (AIA) trial proceeding may file an MTA as a matter of right. See 35 U.S.C. 316(d)(1), 326(d)(1). After receiving public feedback about the PTAB’s MTA practice, including some concerns regarding the low grant rate of claim amendments in AIA trial proceedings, in October 2018, the USPTO published a Request for Comments in the **Federal Register** seeking written public comments on a proposed amendment process in AIA trials that would involve preliminary guidance from the PTAB on the merits of an MTA and an opportunity for a patent owner to file a revised MTA. Request for Comments on MTA Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 83 FR 54319 (Oct. 29, 2018). The majority of comments supported the PTAB issuing preliminary guidance in cases involving an MTA and commenters were almost evenly mixed in supporting or opposing the opportunity for a patent owner to file a revised MTA.

On March 15, 2019, in response to these public comments, the USPTO issued a Notice detailing the MTA pilot program. Notice Regarding a New pilot program Concerning Motion to Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 84 FR 9,497 (Mar. 15, 2019). The MTA pilot program provides a patent owner with two options not previously available: (1) a patent owner may choose to receive preliminary guidance from the PTAB on its MTA; and (2) a patent owner may choose to file a revised MTA after receiving petitioner’s opposition to the original MTA and/or the PTAB’s preliminary guidance (if requested). If a patent owner does not elect either option, then AIA trial practice, including MTA practice, is essentially

unchanged from the practice prior to the MTA pilot program.

The USPTO has extended the MTA pilot program twice. The first extension on September 16, 2021 ran through September 16, 2022, and the second extension currently runs until September 16, 2024. The USPTO continues to present results of the MTA pilot program yearly, with the most recent report based on data up through March 31, 2024, in Installment 9 of the Motions to Amend Study. The most recent information and statistics related to MTAs are available on the USPTO’s website at <https://www.uspto.gov/patents/ptab/motions-amend-study>.

After four years of experience with the MTA pilot program and development of Federal Circuit case law concerning burden allocation in the MTA context, the USPTO issued a Request for Comments to seek feedback on the public’s experience with the program and the burden-allocation rules that apply to MTAs. See Request for Comments Regarding MTA Pilot Program and Rules of Practice to Allocate the Burdens of Persuasion on Motions to Amend in Trial Proceedings Before the Patent Trial and Appeal Board, 88 FR 33063 (May 23, 2023) (2023 RFC). Then on March 4, 2024, after consideration of the received comments and based on the experience of the Board with the MTA pilot program, the USPTO published a Notice of Proposed Rulemaking concerning Motion to Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board. 89 FR 15531 (“2024 NPRM”). The USPTO proposed to revise its rules of practice to provide for issuance of preliminary guidance in response to an MTA and to provide a patent owner with the option for filing a revised MTA. While the USPTO finalizes rules in this regard, the USPTO is extending the MTA pilot program for a third time. The MTA pilot program is hereby extended through March 31, 2025. The requirements for the MTA pilot program remain as set forth in the original Notice without modification at this time.

Katherine K. Vidal,

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

[FR Doc. 2024-21135 Filed 9-16-24; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–27]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953–6092, *pamela.a.young14.civ@mail.mil*, or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil*.

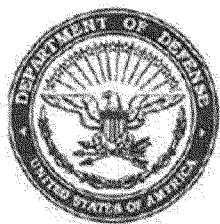
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of

section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 21–27, Policy Justification, and Sensitivity of Technology.

Dated: September 11, 2024.

Aaron T. Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

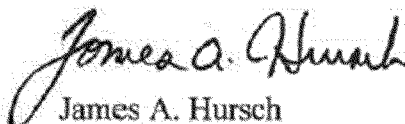
APR 11 2023

The Honorable Kevin McCarthy
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-27, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Morocco for defense articles and services estimated to cost \$524.2 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,


 James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 21-27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Morocco

(ii) *Total Estimated Value:*

Major Defense Equipment * \$445.4 million

Other \$ 78.8 million

TOTAL \$524.2 million

Funding Source: National Funds
 (iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

(iv) *Major Defense Equipment (MDE):*
 Eighteen (18) M142 High Mobility Artillery Rocket System (HIMARS) Launchers

Forty (40) M57 Army Tactical Missile Systems (ATACMS)

Thirty-six (36) M31A2 Guided Multiple Launch Rocket Systems (GMLRS) Unitary

Thirty-six (36) M30A2 Guided Multiple Launch Rocket Systems (GMLRS) Alternative Warhead

Nine (9) M1152A1 High Mobility Multipurpose Wheeled Vehicles (HMMWV)

Eighteen (18) International Field Artillery Tactical Data Systems (IFATDS)

(v) *Non-MDE*:

Also included are forty (40) M28A2 Low Cost Reduced Range Practice Rocket Pods (LCRRPR); radios with similar "SINGARS" capability; thirty-five (35) Vehicular Dual Long-Range Radio Systems w/GPS; twenty-four (24) Single Radio, Long Range Vehicular System w/GPS; eighteen (18) M1084A2 cargo truck, Family of Medium Tactical Vehicles (FMTV) Resupply Vehicles (RSV); three (3) M1089A2 wrecker truck, FMTV, RSV; eighteen (18) M1095 5-ton trailer, FMTV; twenty-three (23) Simple Key Loader (SKL), AN/PYQ-10; fifty (50) Defense Advanced Global Positioning System Receivers (DAGR); camouflage screen and support systems; support equipment; communications equipment; spare and repair parts; test sets; laptop computers; training and training equipment; publications; systems integration support; technical data; Stockpile Reliability, Quality Assurance and Technical Assistance teams; U.S. Government and contractor technical, engineering, and logistics support services; and other related elements of logistical and program support.

(vi) *Military Department*: Army (MO-B-UUA)

(vii) *Prior Related Cases, if any*: None

(viii) *Sales Commission, Fee, etc.*

Paid, Offered, or Agreed to be Paid: None

(ix) *Sensitivity of Technology Contained in Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(x) *Date Report Delivered to Congress*: April 11, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Morocco—High Mobility Artillery Rocket Systems (HIMARS)

The Government of Morocco has requested to buy eighteen (18) M142 High Mobility Artillery Rocket System (HIMARS) launchers; forty (40) M57 Army Tactical Missile Systems (ATACMS); thirty-six (36) M31A2 Guided Multiple Launch Rocket Systems (GMLRS) Unitary; thirty-six (36) M30A2 Guided Multiple Launch Rocket Systems (GMLRS) Alternative Warhead; nine (9) M1152A1 High Mobility Multipurpose Wheeled Vehicles (HMMWV); and eighteen (18) International Field Artillery Tactical Data Systems (IFATDS). Also included

are forty (40) M28A2 Low Cost Reduced Range Practice Rocket Pods (LCRRPR); radios with similar "SINGARS" capability; thirty-five (35) Vehicular Dual Long-Range Radio Systems w/GPS; twenty-four (24) Single Radio, Long Range Vehicular System w/GPS; eighteen (18) M1084A2 cargo truck, Family of Medium Tactical Vehicles (FMTV) Resupply Vehicles (RSV); three (3) M1089A2 wrecker truck, FMTV, RSV; eighteen (18) M1095 5-ton trailer, FMTV; twenty-three (23) Simple Key Loader (SKL), AN/PYQ-10; fifty (50) Defense Advanced Global Positioning System Receivers (DAGR); camouflage screen and support systems; support equipment; communications equipment; spare and repair parts; test sets; laptop computers; training and training equipment; publications; systems integration support; technical data; Stockpile Reliability, Quality Assurance and Technical Assistance teams; U.S. Government and contractor technical, engineering, and logistics support services; and other related elements of logistical and program support. The estimated total cost is \$524.2 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO Ally that continues to be an important force for political stability and economic progress in North Africa.

The proposed sale will improve Morocco's capability to meet current and future threats and will contribute to Morocco's ability to detect threats and control its borders, contributing to the maintenance of regional stability and security. It will also enhance the interoperability of the Royal Armed Forces (FAR), which routinely exercises with U.S. forces, focusing on countering terrorism and Violent Extremist Organizations (VEOs) in the Maghreb and Sahel region. Morocco will have no difficulty absorbing these articles into its armed forces.

The proposed sale of this equipment and support will not alter the military balance in the region.

The principal contractors will be Lockheed Martin Missiles and Fire Control, Camden, AK; L3 Harris Communications, Inc., Rochester, NY; Raytheon, Waltham, MA; COBHAM Aerospace Connectivity, Buckinghamshire, UK; Oshkosh Defense, LLC, Oshkosh, WI; AAR Corporation AAR Manufacturing, Inc., Cadillac, MI; and AM General LLC, South Bend, IN. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of U.S.

Government and U.S. contractor representatives in Country: one (1) Contractor Field Service Representative (HIMARS) for a period of two years; two (2) U.S. Government personnel; and seven (7) U.S. contractor representatives (13M HIMARS Crewmember Training) for a period of five (5) months; one (1) Contractor Field Service Representative (IFATDS) for a period of one year; one (1) Contractor Field Service Representative (FMTV) for a period of one year; and one (1) Contractor Field Service Representative (HMMWV) for a period of one year.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21–27

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The M142 High Mobility Artillery Rocket System (HIMARS) launcher is a C-130 transportable wheeled version of the M270 Multiple Launch Rocket System (MLRS) launcher. It integrates the launch system on a five-ton Family of Medium Tactical Vehicles (FMTV) chassis. The system is capable of firing all of the MLRS Family of Munitions. The Universal Fire Control System (UFCS) provides the command and control interface, man-machine interface, weapon interface, launcher interface and embedded training, the UFCS enables the launcher to inter-operate with compatible national fire direction systems to navigate to specific fire and reload points, compute the technical firing solution, and orient the Launcher Module on the target to deliver the weapon accurately and effectively. The UFCS also provides position navigation and processing necessary to direct and maintain control of the launcher system to allow for accurate firing and loading of weapons.

2. The Guided Multiple Launch Rocket System—Unitary (GMLRS—U) is a solid propellant artillery rocket fires from the High Mobility Artillery Rocket System (HIMARS). GMLRS uses GPS-aided inertial guidance to accurately and quickly deliver a single high-explosive blast fragmentation warhead to targets. The GMLRS—U has an operational range of 15–70km.

3. The Guided Multiple Launch Rocket System—Alternative Warhead (GMLRS—AW) is a Department of Defense alternative munition for a "cluster-type" effect of the GMLRS munition, which is in compliance with

cluster munitions statute and policy. The AW carries a 200-pound fragmentation assembly filled with high explosives which, upon detonation, accelerates two layers of preformed tungsten penetrators toward a target location. This provides an effective capability against imprecisely located targets over a wide area without the risk of leaving behind the unexploded ordinance associated with legacy cluster munitions. The GMLRS-AW is a material change to the GMLRS-U, but the two systems share a greater than 90% commonality.

4. The M57 Army Tactical Missile Systems (ATACMS)—Unitary is a conventional, semi-ballistic missile which utilizes a 500-pound high explosive warhead which can be fired from the HIMARS. ATACMS is a guided by GPS-aided inertial navigation systems to provide precise targeting over ranges of up to 270km.

5. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software

elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that Morocco can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Morocco.

[FR Doc. 2024–21053 Filed 9–16–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–04]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–04, Policy Justification, and Sensitivity of Technology.

Dated: September 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

MAR 29 2023

The Honorable Kevin McCarthy
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-04, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost \$59.1 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
 James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 23-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0 million
Other	\$59.1 million

TOTAL \$59.1 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:* Foreign

Military Sales (FMS) case KU-P-PAK, was below congressional notification threshold at \$48.2 million (all non-MDE) and included Cartridge Actuated Device/Propellant Actuated Device (CAD/PAD) items and support for Calendar Years 2025-2026 (CY25-CY26).

Major Defense Equipment (MDE):
 None

Non-MDE:

The Government of Kuwait has requested the case be amended to include additional CAD/PAD items and support for the Hornet, Super Hornet and KC-130 aircraft fleet. This amendment will push the

current case above the non-MDE notification threshold and thus requires notification of the entire case. CAD/PAD items and support; engineering, technical, and program support; and other related elements of logistics.

(iv) *Military Department:* Navy (KU-P-PAK)

(v) *Prior Related Cases, if any:* KU-P-PAG, KU-P-PAH

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress*: March 29, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait—Cartridge Actuated Device/Propellant Actuated Devices (CAD/PAD) and Support

The Government of Kuwait has requested to buy additional Cartridge Actuated Device/Propellant Actuated Devices (CAD/PAD) and support that will be added to a previously implemented case that was under Congressional notification threshold. The original FMS case, valued at \$48.2 million, included CAD/PAD items and support for Calendar Years 2025–2026 (CY25–CY26). This notification is for CAD/PAD items and support of Kuwait's F/A–18 and KC–130/J aircraft fleet. Also included is engineering, technical, and program support and other related elements of logistics and program support. The total estimated cost is \$59.1 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a Major Non-NATO ally that has been an important force for political stability and economic progress in the Middle East.

The proposed sale will provide Kuwait with the equipment and sustainment support necessary to maintain its air defense capacity to defend its territorial integrity and to meet its national defense requirements. Kuwait will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors are currently unknown, as there will be competitive contract solicitations after FMS case implementation. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23–04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. Cartridge Actuated Device/Propellant Actuated Device (CAD/PADs) are the explosive devices installed within the aircraft escape and safety systems to save lives during emergencies. CAD/PAD are also used to power the aircraft systems that deploy weapons and jettison equipment.

2. The highest level of classification of defense articles, components, and services included in this potential sale is UNCLASSIFIED.

3. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Government of Kuwait can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Kuwait.

[FR Doc. 2024–21052 Filed 9–16–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0098]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (ATSD(PCLT)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Office of the ATSD(PCLT) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and

clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 18, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking 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 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Privacy and Civil Liberties Directorate, 4800 Mark Center Drive, Suite 05F16, Alexandria, VA 22350–1700, Samuel Gotti, 571–629–2648.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Request for Individual Access and Consent for Disclosure to Records Protected Under the Privacy Act; DD Forms 3213 and 3214; OMB Control Number 0704–CASE.

Needs and Uses: This information collection requirement is necessary to allow an individual to request access to their records or to provide prior written consent authorizing disclosure of such records.

Affected Public: Current and former DoD employees and their authorized dependents.

Annual Burden Hours: 45,000.

Number of Respondents: 30,000.

Responses per Respondent: 2.

Annual Responses: 60,000.

Average Burden per Response: 45 Minutes.

Frequency: On occasion, when the subject of the record interacts with their

respective Member of Congress by requesting access to and consenting to the disclosure of their records.

The Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (CASES Act) was enacted to modernize and simplify the process by which individuals can request access to and consent to the disclosure of their personal records held by Federal agencies. This Act addresses the inefficiencies and inconsistencies that previously existed in obtaining written consent for information disclosure. Under the Privacy Act of 1974, individuals have the right to access their records and control the disclosure of their personal information. However, the traditional process of obtaining written consent was often cumbersome, requiring physical signatures and manual transmission of forms. This not only delayed the resolution of constituent inquiries but also created variability in how different Components

within DoD handled these requests. The CASES Act mandates the use of electronic access and consent forms, which can be submitted digitally. By allowing digital submissions, the Act aims to streamline the process, reduce delays, and enhance the efficiency of government services.

Dated: September 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–21031 Filed 9–16–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21–57]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

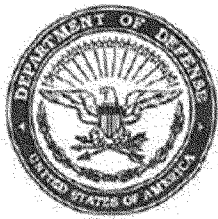
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 21–57, Policy Justification, and Sensitivity of Technology.

Dated: September 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

APR 11 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-57 concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Morocco for defense articles and services estimated to cost \$250 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 21-57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Morocco

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$100 million
Other	\$150 million

TOTAL \$250 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Forty (40) AGM-154C Joint Stand Off Weapons (JSOW)

Non-MDE:

Also included are Dummy Air Training Missiles; Captive Flight

Vehicles (CFVs); Free Flight Vehicles (FFVs); containers; mission planning, integration support, and testing; munitions storage security and training; weapon operational flight program software development; transportation, tools and test equipment; support equipment; spare and repair parts; publications and technical documentation;

personnel training and training equipment; U.S. Government and contractor engineering and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department: Navy (MO-P-AAM)*

(v) *Prior Related Cases, if any: Navy (MO-P-LBI, MO-P-AAL), Air Force (MO-D-SAH)*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: April 11, 2023*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Morocco—Joint Stand Off Weapons (JSOW)

The Government of Morocco has requested to buy forty (40) AGM-154C Joint Stand Off Weapons (JSOW). Also included are Dummy Air Training Missiles; Captive Flight Vehicles (CFVs); Free Flight Vehicles (FFVs); containers; mission planning, integration support, and testing; munitions storage security and training; weapon operational flight program software development; transportation, tools and test equipment; support equipment; spare and repair parts; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering and logistics support services; and other related elements of logistical and program support. The estimated total cost is \$250 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a Major Non-NATO Ally that continues to be an important force for political stability and economic progress in North Africa.

The proposed sale will improve Morocco's capability to meet current and future threats. Morocco intends to use the missiles on its F-16, multi-role

fighter aircraft and will provide enhanced capabilities in effective defense of critical sea lanes. The proposed sale of these missiles and support will increase the Royal Moroccan Air Force's maritime partnership potential and align its capabilities with existing regional baselines. Morocco will have no difficulty absorbing these weapons into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missiles & Defense Company, Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require annual trips to Morocco involving U.S. Government and contractor representatives for technical reviews, support, and oversight for approximately seven (7) years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21-57

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AGM-154 Joint Stand Off Weapon (JSOW) is used by Navy, Marine Corps, and Air Force, and allows aircraft to attack well-defended targets in day, night, and adverse weather conditions. The AGM-154C carries a BROACH warhead. The BROACH warhead incorporates an advanced multi-stage warhead. The JSOW uses the Global Positioning System (GPS) Precise Positioning System (PPS), which provides for a more accurate capability than the commercial version of GPS.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software

elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Morocco can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Morocco.

[FR Doc. 2024-21054 Filed 9-16-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-32]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-32, Policy Justification, and Sensitivity of Technology.

Dated: September 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

April 26, 2023

The Honorable Kevin McCarthy
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-32, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Norway for defense articles and services estimated to cost \$1 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 23-32

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Norway

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$.550 billion
Other	\$.450 billion
TOTAL	\$1.000 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Six (6) MH-60R Multi-Mission Helicopters

Fifteen (15) T-700-GE-401C Engines (12 installed, 3 spares)

Nine (9) Link 16 Multifunctional Information Distribution Systems Joint Tactical Radio Systems (MIDS JTRS) (6 installed, 3 spares)

Eighteen (18) Embedded Global Positioning System/Precise Positioning Service (GPS/PPS)/Inertial Navigation Systems (EGI) with Selective Availability/Anti-Spoofing Module (SAASM) (12 installed, 6 spares)

Six (6) Airborne Low Frequency Sonars (ALFS) (aircraft provisions only)

Non-MDE:

Also included are M514 impulse cartridge/cartridge actuated devices; MJ20 cartridge actuated thruster/

cartridge actuated devices; WB53 fire extinguisher cartridge/cartridge actuated devices; CCU-136A/A impulse cartridge; GAU-21 crew-served guns (including pintle and laser pointer); AN/ARC-210 RT-2036 radios with Communications Security (COMSEC); AN/AAR-47 missile warning systems; AN/APX-123 Identification Friend or Foe (IFF) transponders; AN/ALE-47 dispensers; Electronic Countermeasures; Advanced Data Transfer Systems (ADTS); AN/AAS-44C(V) Multi-Spectral Targeting Systems; Identification Friend or Foe Mode 4/5 Cryptographic Applique, KIV-78; Joint Mission Planning Systems (JMPS); AN/ARQ-59 Hawklark radio terminals; Training Simulators/Operational Machine Interface Assistants (ATS/OMIA); Aviation Maintenance Weapons Loading Trainer (AMWLT); Tactical Operational Flight Trainer (TOFT); AN/ALQ-210 Electronic Support Measures (ESM) systems; APS-153(V) multi-mode radars; spare engine containers; spare and repair parts; support and test equipment; communications equipment; ferry support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; obsolescence engineering, integration, and test activities required to ensure readiness for the production of the Norwegian MH-60R helicopters; and other related elements of logistics and program support.

(iv) *Military Department: Navy (NO-P-SAR)*

(v) *Prior Related Cases, if any: NO-P-GFF*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: April 26, 2023*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Norway—Defense Articles and Services Related to the MH-60R Multi-Mission Helicopters

The Government of Norway has requested to buy six (6) MH-60R Multi-Mission Helicopters; fifteen (15) T-700-GE-401C engines (12 installed, 3 spares); nine (9) Link 16 Multifunctional Information Distribution Systems Joint

Tactical Radio Systems (MIDS JTRS) (6 installed, 3 spares); eighteen (18) Embedded Global Positioning System/Precise Positioning Service (GPS/PPS)/Inertial Navigation Systems (EGI) with Selective Availability/Anti-Spoofing Module (SAASM) (12 installed, 6 spares); and six (6) Airborne Low Frequency Sonars (ALFS) (aircraft provisions only). Also included are M514 impulse cartridge/cartridge actuated devices; MJ20 cartridge actuated thruster/cartridge actuated devices; WB53 fire extinguisher cartridge/cartridge actuated devices; CCU-136A/A impulse cartridges; GAU-21 crew served guns (including pintle and laser pointer); AN/ARC-210 RT-2036 radios with Communications Security (COMSEC); AN/AAR-47 missile warning systems; AN/APX-123 Identification Friend or Foe (IFF) transponders; AN/ALE-47 dispensers; Electronic Countermeasures; Advanced Data Transfer Systems (ADTS); AN/AAS-44C(V) Multi-Spectral Targeting Systems; Identification Friend or Foe Mode 4/5 Cryptographic Applique, KIV-78; Joint Mission Planning Systems (JMPS); AN/ARQ-59 Hawklark radio terminals; Training Simulators/Operational Machine Interface Assistants (ATS/OMIA); Aviation Maintenance Weapons Loading Trainer (AMWLT); Tactical Operational Flight Trainer (TOFT); AN/ALQ-210 Electronic Support Measures (ESM) systems; APS-153(V) multi-mode radars; spare engine containers; spare and repair parts; support and test equipment; communications equipment; ferry support; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; obsolescence engineering, integration, and test activities required to ensure readiness for the production of the Norwegian MH-60R helicopters; and other related elements of logistics and program support. The total estimated program cost is \$1 billion.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a NATO Ally that is an important force for political stability and economic progress in Europe.

The proposed sale will improve Norway's capability to perform search and rescue, anti-surface, and anti-submarine warfare missions along with the ability to perform secondary missions, including vertical replenishment and communications relay. Norway will use the enhanced capability as a deterrent to regional

threats and to strengthen its homeland defense. Norway will have no difficulty absorbing these helicopters and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Rotary and Mission Systems, Owego, New York. The purchaser has requested offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require multiple trips by U.S. Government representatives and the assignment of contractor representatives to Norway on an intermittent basis over the life of the case to support delivery and integration of items and to provide supply support management, inventory control, and equipment familiarization. In addition, there will be up to four (4) contractor representatives in Norway full-time for the duration of the case.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23-32

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The MH-60R Multi-Mission Helicopter focuses primarily on anti-submarine warfare (ASW) and anti-surface warfare (ASuW) missions. The MH-60R also performs search and rescue, naval gunfire support, surveillance, communications relay, logistics support, personnel transfer, and vertical replenishment missions. The MH-60R carries several sensors and data links to enhance its ability to work in a network centric battle group and as an extension of its home ship or main operating base. The mission equipment subsystem consists of the following sensors and subsystems: an acoustics system capable of, but not configured for, future dipping sonar and sonobuoy operations, Multi-Mode Radar (MMR) with integral Identification Friend or Foe (IFF) interrogator, radios with COMSEC, Electronic Support Measures (ESM), Integrated Self-Defense (ISD), and Multi-Spectral Targeting System (MTS). The aircraft processes sensor data onboard, and transmits data via Common Data Link (CDL) (also referred to as Hawklark). The aircraft is night vision compatible. It can carry AGM-114A/B/K/N Hellfire missiles, as well as MK 46/54 torpedoes to engage surface

and sub-surface targets. The MH-60R Multi-Mission Helicopter is capable of carrying the Airborne Low Frequency Sonars (ALFS), GAU-61 Digital Rocket Launchers, Advanced Precision Kill Weapons System (APKWS), GAU-21 crew-served guns, and M240 crew-served guns.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Norway can provide substantially the same degree of protection for the sensitive technology being released as

the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Norway.

[FR Doc. 2024-21057 Filed 9-16-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 21-34]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 21-34, Policy Justification, and Sensitivity of Technology.

Dated: September 11, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

April 17, 2023

The Honorable Kevin McCarthy
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 21-34 concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Turkey for defense articles and services estimated to cost \$259 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Section 620C(d) Certification

BILLING CODE 6001-FR-C

Transmittal No. 21-34

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Turkey

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0 million
Other	\$ 259 million
TOTAL	\$ 259 million

Funding Source: National Funds
 (iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

The Government of Turkey has requested to buy defense articles and services to support upgrading its fleet of F-16 aircraft, to include software upgrades of the Operational Flight Program (OFP) avionics with the Automatic

Ground Collision Avoidance System (AGCAS) capability; hardware modifications to enable integration of the Multifunctional Information Distribution System Block Upgrade II (MIDS BU II), procured separately; hardware and software upgrades to include aircraft major modification; both classified and unclassified software and software support; integration and test support; support equipment; training and training equipment; spare and repair parts;

publications and technical documentation; U.S. Government and contractor engineering, technical, and logistical support services; and other related elements of logistical and program support.

(iv) *Military Department: Air Force* (TK-D-VAL)

(v) *Prior Related Cases, if any:* TK-P-LKT, TK-D-SFA, TK-D-SLA, TK-D-SMB, TK-D-NCU

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* April 17, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Turkey—F-16 Avionics Upgrade

The Government of Turkey has requested to buy defense articles and services to support upgrading its fleet of F-16 aircraft, to include software upgrades of the Operational Flight Program (OFP) avionics with the Automatic Ground Collision Avoidance System (AGCAS) capability; hardware modifications to enable integration of the Multifunctional Information Distribution System Block Upgrade II (MIDS BU II), procured separately; hardware and software upgrades to include aircraft major modification; both classified and unclassified software and software support; integration and test support; support equipment; training and training equipment; spare and repair parts; publications and technical documentation; U.S. Government and contractor engineering, technical, and logistical support services; and other related elements of logistical and program support. The estimated total cost is \$259 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a NATO ally that is an important force for political stability and economic progress in the Black Sea region.

The proposed sale will improve Turkey's capability to meet current and future threats by providing a critical flight safety and tactical integration capability to assist in defending its homeland and U.S. personnel stationed there. Turkey has demonstrated a willingness to modernize its F-16 capabilities since it purchased the aircraft in the mid-1980s and will have no difficulty absorbing these capabilities into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Aeronautics Company of Fort Worth, TX. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of U.S. Government or contractor representatives in Turkey.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 21-34

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

Sensitivity of Technology:

1. The Automatic Ground Collision Avoidance System capability is used as a flight safety mitigation tool in order to reduce incidents of controlled flight into terrain and ground collisions, which account for seventy-five percent of F-16 pilot fatalities worldwide. The system consists of a series of collision avoidance and autonomous decision-making algorithms that utilize precise navigation, aircraft performance, and digital terrain data to determine if a collision is imminent. If the system determines a collision is imminent, the system commands an autonomous maneuver to prevent impact, although the pilot may override this functionality.

2. The highest level of defense articles, components, and services included in this potential sale is CONFIDENTIAL.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Turkey.

[FR Doc. 2024-21056 Filed 9-16-24; 8:45 am]

BILLING CODE 6001-FR-P

ELECTION ASSISTANCE COMMISSION

Testing and Certification Program Manuals

AGENCY: Election Assistance Commission.

ACTION: Notice, request for comment.

SUMMARY: The U.S. Election Assistance Commission (EAC) is publishing two documents for public comment. Version 3.1 of the Testing and Certification Program Manual and version 3.1 of the Voting System Testing Laboratory (VSTL) Program Manual. The EAC is seeking public comments on these manuals. The public comment period will last 60 days. These versions replace version 3.0 of both documents.

DATES: Comments must be received by 5 p.m. eastern on Friday November 15, 2024.

ADDRESSES: To view these documents, see: <https://www.eac.gov/voting-equipment/manuals-and-forms> under Draft Manuals. Comments on both manuals should be submitted electronically via <https://www.regulations.gov> (docket IDs: EAC-2024-0003). Written comments on the proposed document can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: Testing and Certification.

FOR FURTHER INFORMATION CONTACT: Jonathan Le, Senior Election Technology Specialist, Testing and Certification Program. Telephone: 202-870-1140. Email: TestingCertification@eac.gov.

SUPPLEMENTARY INFORMATION: In late 2002, Congress passed the Help America Vote Act of 2002 (HAVA), which created the U.S. Election Assistance Commission (EAC) and vested it with the responsibility of setting voting system standards and for providing for the testing and certification of voting systems. This mandate represented the first time the Federal Government provided for the voluntary testing, certification and decertification of voting systems nationwide. In response to this HAVA requirement, the EAC has developed the Voting System Testing and Certification Program. The manuals provide the procedural requirements of the Program. Participation in the Program is voluntary, but if voting system manufacturers and laboratories decide to participate then they must conform to the Program's procedural requirements. The manuals are reviewed periodically and updated to meet the needs of the EAC, manufacturers, laboratories, election officials, and the greater election community.

Public Comments: Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that

your submitted comments, including your personal information, will be available for public review.

Respondents: Election Supporting Technology Manufacturers, Voting System Test Laboratories, State and Local Election Officials.

Camden Kelliher,

Acting General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024–21072 Filed 9–16–24; 8:45 am]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–284–000.
Applicants: Wheatridge East Wind, LLC.

Description: Wheatridge East Wind, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/11/24.

Accession Number: 20240911–5110.

Comment Date: 5 p.m. ET 10/2/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1865–003; ER19–2142–004; ER19–2143–004; ER19–1866–003; ER19–2148–005; ER19–1867–003; ER19–2147–004; ER19–2141–004; ER19–1868–003; ER19–1869–003; ER19–2145–004; ER19–2144–004; ER19–1870–003; ER19–2140–004; ER19–1871–003; ER19–1872–003; ER19–2146–004.

Applicants: Warren Generation, LLC, Tolna Power, LLC, Titus Power, LLC, Shawville Power, LLC, Shawnee Power, LLC, Sayreville Power, LLC, Portland Power, LLC, Orrtanna Power, LLC, Niles Power, LLC, New Castle Power, LLC, Mountain Power, LLC, Hunterstown Power, LLC, Heritage Power Marketing, LLC, Hamilton Power, LLC, Gilbert Power, LLC, Brunot Island Power, LLC, Blossburg Power, LLC.

Description: Supplement to 07/31/2024, Notice of Change in Status of Blossburg Power, LLC, et al.

Filed Date: 9/9/24.

Accession Number: 20240909–5198.

Comment Date: 5 p.m. ET 9/30/24.

Docket Numbers: ER24–2519–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of ER24–2519–000, Original GIA No. 7304; AG1–100 to be effective 6/14/2024.

Filed Date: 9/11/24.

Accession Number: 20240911–5066.

Comment Date: 5 p.m. ET 10/2/24.

Docket Numbers: ER24–3017–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 394 to be effective 11/10/2024.

Filed Date: 9/10/24.

Accession Number: 20240910–5138.

Comment Date: 5 p.m. ET 10/1/24.

Docket Numbers: ER24–3018–000.

Applicants: Serrano Solar, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 11/11/2024.

Filed Date: 9/11/24.

Accession Number: 20240911–5034.

Comment Date: 5 p.m. ET 10/2/24.

Docket Numbers: ER24–3019–000.

Applicants: ISO New England Inc., Vermont Transco LLC.

Description: 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii) Vermont Transco LLC; Request for Approval of Updated Depreciation Rates to be effective 11/1/2024.

Filed Date: 9/11/24.

Accession Number: 20240911–5062.

Comment Date: 5 p.m. ET 10/2/24.

Docket Numbers: ER24–3020–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA, SA No. 7343; Queue No AF1–092 to be effective 11/11/2024.

Filed Date: 9/11/24.

Comment Date: 5 p.m. ET 10/2/24.

Docket Numbers: ER24–3021–000.

Applicants: Ashwood Solar I, LLC.

Description: Baseline eTariff Filing: Market Based Rate to be effective 9/11/2024.

Filed Date: 9/11/24.

Accession Number: 20240911–5102.

Comment Date: 5 p.m. ET 10/2/24.

Docket Numbers: ER24–3022–000.

Applicants: Eldorado Solar Project, LLC.

Description: Initial rate filing: Eldorado Solar Shared Facilities Agreement Filing to be effective 10/28/2024.

Filed Date: 9/11/24.

Accession Number: 20240911–5104.

Comment Date: 5 p.m. ET 10/2/24.

Docket Numbers: ER24–3023–000.

Applicants: Florida Power & Light Company.

Description: 205(d) Rate Filing: FPL Certificate of Concurrence-DEF Interchange Contract-RS No. 24 to be effective 11/9/2024.

Filed Date: 9/11/24.

Accession Number: 20240911–5127.

Comment Date: 5 p.m. ET 10/2/24.

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: September 11, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–21129 Filed 9–16–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD24–11–000]

Large Loads Co-Located at Generating Facilities; Second Supplemental Notice of Commissioner-Led Technical Conference

As announced in the August 2, 2024 Notice in this proceeding, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference in the above-referenced proceeding. The technical conference will take place on November 1, 2024, from 10:00 a.m. to 3:00 p.m. Eastern Time, with a lunch break. The technical conference will be

held in person at the Commission's headquarters at 888 First Street NE, Washington, DC 20426 in the Commission Meeting Room. The purpose of this technical conference is to discuss generic issues related to the co-location of large loads at generating facilities. The Commission does not intend to discuss at this technical conference any specific proceeding before the Commission. This supplemental notice provides additional detail as to the planned content of the technical conference and the self-nomination process for interested panelists.

A preliminary agenda for this conference is attached. The Commission will issue a further supplemental notice with a full agenda that includes the list of panelists. The technical conference will be open to the public. Advance registration is not required, and there is no fee for attendance. Information will also be posted on the Calendar of Events on the Commission's website, www.ferc.gov, prior to the event. To stay apprised of issuances in this docket, there is an "eSubscription" link on the Commission's website that enables subscribers to receive email notification when a document is added to a subscribed docket(s).

The technical conference will be transcribed and webcast. Transcripts will be available for a fee from Ace Reporting (202-347-3700). A link to the webcast of this event will be available in the Commission Calendar of Events at www.ferc.gov. The Commission provides technical support for the free webcasts. Please call 202-502-8680 or email customer@ferc.gov if you have any questions.

Commission technical conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to accessibility@ferc.gov or call toll free 1-866-208-3372 (voice) or 202-208-8659 (TTY) or send a fax to 202-208-2106 with the required accommodations.

Individuals interested in participating as panelists should submit a self-nomination email by 5:00 p.m. Eastern Time on September 19, 2024, to Panelists-AD24-11@ferc.gov. Each nomination should have "Panelist Self-Nomination" in the subject line and state the proposed panelist's name, contact information, organizational affiliation, and what panels and topics the proposed panelist would speak on. Speakers will be asked to provide pre-conference background materials and a written opening statement to facilitate the discussion during the technical conference, and those materials will be

available as part of the public record in this docket.

For more information about this technical conference, please contact Keatley Adams at Keatley.Adams@ferc.gov or 202-502-8678. For legal information, please contact Christopher Chaulk at Christopher.Chaulk@ferc.gov or 202-502-6720. For information related to logistics, please contact Sarah McKinley at Sarah.Mckinley@ferc.gov or 202-502-8368.

Dated: September 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-21022 Filed 9-16-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2639-028]

Northern States Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license to continue to operate and maintain the Cornell Hydroelectric Project (project). The project is located on the Chippewa River, in the City of Cornell, Chippewa County, Wisconsin. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (<http://www.ferc.gov/>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, or toll-free at (866) 208-3676, or for TTY, (202) 502-8659.

You may also register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to this

or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595, or OPP@ferc.gov.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments 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. 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 docket number P-2639-028.

For further information, contact Michael Davis at 202-502-8339 or michael.davis@ferc.gov.

Dated: September 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-21030 Filed 9-16-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20-1041-004.

Applicants: Wabash Valley Power Association, Inc.

Description: ALJ Settlement: ER20–1041—Settlement Agreement and Offer of Settlement to be effective N/A.

Filed Date: 9/3/24.

Accession Number: 20240903–5003.

Comment Date: 5 p.m. ET 9/23/24.

Docket Numbers: ER24–1679–000.

Applicants: Eden Solar LLC.

Description: Amendment to 04/01/2024 Eden Solar LLC tariff filing.

Filed Date: 9/9/24.

Accession Number: 20240909–5196.

Comment Date: 5 p.m. ET 9/19/24.

Docket Numbers: ER24–3011–000.

Applicants: Reworld Camden County, L.P.

Description: Compliance filing: Notice of Succession to be effective 9/10/2024.

Filed Date: 9/9/24.

Accession Number: 20240909–5171.

Comment Date: 5 p.m. ET 9/30/24.

Docket Numbers: ER24–3013–000.

Applicants: Southwest Power Pool, Inc.

Description: Notice of Cancellation of Generator Interconnection Agreement of Southwest Power Pool, Inc.

Filed Date: 9/10/24.

Accession Number: 20240910–5051.

Comment Date: 5 p.m. ET 10/1/24.

Docket Numbers: ER24–3014–000.

Applicants: Willow Springs Solar, LLC.

Description: § 205(d) Rate Filing: Certificates of Concurrence and Request for Waiver to be effective 9/11/2024.

Filed Date: 9/10/24.

Accession Number: 20240910–5067.

Comment Date: 5 p.m. ET 10/1/24.

Docket Numbers: ER24–3015–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule No. 150 to be effective 8/1/2024.

Filed Date: 9/10/24.

Accession Number: 20240910–5102.

Comment Date: 5 p.m. ET 10/1/24.

Docket Numbers: ER24–3016–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Service Agreement No. 883 to be effective 8/1/2024.

Filed Date: 9/10/24.

Accession Number: 20240910–5106.

Comment Date: 5 p.m. ET 10/1/24.

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: September 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–21026 Filed 9–16–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL24–136–000]

Hickory Run Energy LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On September 11, 2024, the Commission issued an order in Docket No. EL24–136–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Hickory Run Energy LLC's Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Hickory Run Energy LLC*, 188 FERC ¶ 61,170 (2024).

The refund effective date in Docket No. EL24–136–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL24–136–000 must file a notice of intervention or

motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2023), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: 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 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: September 11, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–21131 Filed 9–16–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–94–004]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on September 6, 2024, Transcontinental Gas Pipe Line Company, LLC (Transco), 2800 Post Oak Boulevard, Houston, Texas 77056–6106, filed an application under section 7(c)(1)(B) of the Natural Gas Act (NGA),¹ and part 157 of the Commission's regulations² requesting that the Commission issue a temporary certificate of public convenience and necessity for its Regional Energy Access Expansion (Project) in order to continue to operate the Project facilities until the Commission responds to the July 30, 2024 decision of the U.S. Court of Appeals for the District of Columbia Circuit in *New Jersey Conservation Foundation v. FERC*,³ which vacated and remanded the Commission's order granting a certificate of public convenience and necessity for the Project,⁴ all as more fully set forth in the application which is on file with the Commission and open for 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 regarding the request should be directed to Stephen Hatridge, Vice President & Assistant General Counsel, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas 77251–1396, by telephone at (713) 215–2872, or by email at Stephen.A.Hatridge@williams.com.

Public Participation

There are three ways to become involved in the Commission's review of this request: you can file comments on the request, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on October 1, 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.

Comments

Any person wishing to comment on the request may do so. Comments may include statements of support or objections, to the request as a whole or specific aspects of the request. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)⁵ and 385.211⁶ of the Commission's regulations under the NGA, any person⁷ may file a protest to the application. Protests must comply with the requirements specified in section

385.2001⁸ of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before October 1, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the docket number CP21–94–004 in your submission.

(1) 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 the request;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the docket number (CP21–94–004).

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

The Commission considers all comments received about the request in determining the appropriate action to be taken. However, 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. For instructions on how to intervene, see below.

¹ 15 U.S.C. 717f(c)(1)(B).

² 18 CFR part 157.

³ 111 F.4th 42 (D.C. Cir. 2024).

⁴ *Transcontinental Gas Pipe Line Company, LLC*, 182 FERC ¶ 61,006 (2023), *reh'g denied*, 182 FERC ¶ 61,148 (2023), *vacated and remanded*, 111 F.4th 42.

⁵ 18 CFR 57.10(a)(4).

⁶ 18 CFR 385.211.

⁷ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁸ 18 CFR 385.2001.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,⁹ 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 Procedure¹⁰ and the regulations under the NGA¹¹ by the intervention deadline for the request, which is October 1, 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 request 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>.

There are two ways to submit your motion to intervene. In both instances, please reference the docket number CP21–94–004 in your submission.

(1) You may file your motion to intervene 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 "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the docket number CP21–94–004.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission,

12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of motions to intervene (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 at: Stephen Hatridge, Vice President & Assistant General Counsel, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas 77251–1396 or by email at Stephen.A.Hatridge@williams.com.

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. Service can be via email with a link to the document.

All timely, unopposed¹² motions to intervene are automatically granted by operation of Rule 214(c)(1).¹³ 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.¹⁴ 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.

Tracking the Proceeding

Throughout the proceeding, additional information about the request 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.

Intervention Deadline: 5:00 p.m. Eastern Time on October 1, 2024.

Dated: September 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–21029 Filed 9–16–24; 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: RP24–1060–000.

Applicants: Adelphia Gateway, LLC.

Description: 4(d) Rate Filing: Changes to Section 6.26 of General Terms and Conditions to be effective 10/15/2024.

Filed Date: 9/10/24.

Accession Number: 20240910–5095.

Comment Date: 5 p.m. ET 9/23/24.

Docket Numbers: RP24–1061–000.

Applicants: Texas Eastern

Transmission, LP.

Description: 4(d) Rate Filing:

Negotiated Rates—MC Global to CIMA Energy eff 9–10–24 to be effective 9/10/2024.

Filed Date: 9/10/24.

Accession Number: 20240910–5133.

Comment Date: 5 p.m. ET 9/23/24.

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

⁹ 18 CFR 385.102(d).

¹⁰ 18 CFR 385.214.

¹¹ 18 CFR 157.10.

¹² The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

¹³ 18 CFR 385.214(c)(1).

¹⁴ 18 CFR 385.214(b)(3) and (d).

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: September 11, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-21130 Filed 9-16-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt

of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto

in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. Each 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. 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.

Docket Nos.	File date	Presenter or requester
<i>Prohibited:</i>		
1. ER24-2798-000	8-28-2024	FERC Staff. ¹
ER24-2797-000.		
ER24-2671-000.		
2. EL24-113-000	9-4-2024	FERC Staff. ²
EL24-118-000.		
EL24-124-000.		
EL24-126-000.		
3. P-3409-032	9-9-2024	FERC Staff. ³
<i>Exempt:</i>		
None.		

Dated: September 10, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-21028 Filed 9-16-24; 8:45 am]

BILLING CODE 6717-01-P

¹ Emailed comment dated 8/28/24 from Advanced Energy United.

² Chairman Phillips received the materials in an email from Sudeen Kelly of Jenner & Block on July 29, 2024, at 11:21. Anand Viswanathan of Jenner & Block was cc'd. Richard Lehfeldt received the materials in an email from Anand Viswanathan on July 29, 2024, at 12:22 p.m. Anand Viswanathan forwarded to him Sudeen Kelly's email to the Chairman with the materials.

Commissioner Chang received the materials in an email from Sudeen Kelly on July 29, 2024, at 11:32. Anand Viswanathan of was cc'd. Steven Wellner, Catherine Giljohann, and Kathleen Ratcliff

received the materials in an email from Anand Viswanathan on July 29, 2024, at 12:11 p.m. Anand Viswanathan forwarded to them Sudeen Kelly's email to Cmr. Chang with the materials.

Commissioner Christie received the materials in an email from Sudeen Kelly on July 29, 2024, at 11:24. Anand Viswanathan was cc'd. Tegan Flynn and Samuel Backfield received the materials in an email from Anand Viswanathan on July 29, 2024, at 12:20 p.m. Anand forwarded to them Sudeen Kelly's email to Cmr. Christie with the materials.

Commissioner Rosner received the materials in an email from Sudeen Kelly on July 29, 2024, at 11:27. Anand Viswanathan was cc'd. Robert Fares,

Suthima Malayaman, Arielle Schwartz received the materials in an email from Anand Viswanathan on July 29, 2024, at 12:18 p.m. Anand Viswanathan forwarded to them Sudeen Kelly's email to Cmr. Rosner with the materials.

Commissioner See received the materials in an email from Sudeen Kelly on July 29, 2024, at 11:28. Anand Viswanathan was cc'd. Danielle Bertoldi received the materials in an email from Anand Viswanathan on July 29, 2024, at 12:15 p.m. Anand Viswanathan forwarded to her Sudeen Kelly's email to Cmr. See with the materials.

³ Emailed comment dated 9/3/24 from Anna McGlashen.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Project No. 4678–053]****New York Power Authority; Notice of Revised Procedural Schedule**

Concurrent with this notice, a letter order was issued granting the New York Power Authority's (NYPA) request to extend the deadline for filing motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions for the Crescent Hydroelectric Project No. 4678 (Crescent Project).¹ Consistent with the letter order, this notice extends the deadlines for filing motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions for the Crescent Project from September 16, 2024 until March 17, 2025. The deadline for filing reply comments is extended from October 31, 2024, to May 1, 2025. This notice also extends the deadline for requesting water quality certification for the Crescent Project from September 16, 2024, until March 17, 2025.

Dated: September 10, 2024.

Debbie-Anne A. Reese,*Acting Secretary.*

[FR Doc. 2024–21027 Filed 9–16–24; 8:45 am]

BILLING CODE 6717–01–P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. CP22–17–000]****Rio Grande LNG, LLC; Notice of Effectiveness of Withdrawal of Application To Amend Section 3 Authorization**

On November 17, 2021, Rio Grande LNG, LLC filed an application pursuant to section 3 of the Natural Gas Act¹ and Part 153 of the Commission's regulations² to amend its authorization for the Rio Grande Liquefied Natural Gas Terminal to incorporate a carbon capture and sequestration system. On August 20, 2024, Rio Grande LNG, LLC filed a notice of withdrawal of its application.

No motion in opposition to the notice of withdrawal has been filed, and the

Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,³ the withdrawal of the application became effective on September 4, 2024, and this proceeding is hereby terminated.

Dated: September 10, 2024.

Debbie-Anne A. Reese,*Acting Secretary.*

[FR Doc. 2024–21021 Filed 9–16–24; 8:45 am]

BILLING CODE 6717–01–P**ENVIRONMENTAL PROTECTION AGENCY****[FRL–12204–01–OA]****Public Meeting of the Science Advisory Board****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office is announcing a public meeting of the chartered Science Advisory Board. The purpose of the meeting is to: receive a briefing from EPA on cumulative impacts research; conduct quality reviews for three draft SAB reports (a review of EPA's draft IRIS toxicological review of inorganic arsenic, a review of EPA's draft technical guidance for assessing environmental justice in regulatory analysis, and a draft commentary on advancing environmental justice science in rulemaking); discuss recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions concerning SAB review of EPA planned regulatory actions; and conduct a consultation with EPA on chemical mixtures.

DATES:

Public meeting: The chartered Science Advisory Board will meet on the following dates. All times listed are in Eastern Time.

1. October 15, 2024, from 9:00 a.m. to 5:00 p.m.

2. October 16, 2024, from 9:00 a.m. to 2:30 p.m.

Comments: See the section titled "Procedures for providing public input" under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The meeting will be conducted in person at the Westin Crystal City at Regan National Airport, 1800 Richmond Highway, Arlington, VA 22202, and virtually. Please refer to the SAB website at <https://sab.epa.gov>

for information on how to attend the meeting virtually.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Shaunta Hill-Hammond, Designated Federal Officer (DFO), via telephone (202) 564–3343, or email at hill-hammond.shaunta@epa.gov. General information about the SAB, as well as any updates concerning the meeting announced in this notice, can be found on the SAB website at <https://sab.epa.gov>.

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S. Code 10. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the chartered Science Advisory Board will hold a public meeting to (1) receive a briefing from EPA on cumulative impacts research, (2) conduct quality reviews for three draft SAB reports (a review of EPA's draft IRIS toxicological review of inorganic arsenic, a review of EPA's draft technical guidance for assessing environmental justice in regulatory analysis, and a draft commentary on advancing environmental justice science in rulemaking), (3) discuss recommendations received from the SAB Work Group for Review of Science Supporting EPA Decisions concerning SAB review of EPA planned regulatory actions, and (4) conduct a consultation with EPA on chemical mixtures.

Availability of meeting materials: All meeting materials, including the agenda, will be available on the SAB web page at <https://sab.epa.gov>.

Procedures for providing public input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to 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 and panels, including scientific advisory committees, provide independent advice to the EPA.

¹ See https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20240910-3041.

¹ 15 U.S.C. 717b.

² 18 CFR 153 (2023).

³ 18 CFR 385.216(b) (2023).

Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comments should follow the instruction below to submit comments.

Oral statements: In general, individuals or groups requesting an oral presentation will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted under **FOR FURTHER INFORMATION CONTACT**, by October 1, 2024, to be placed on the list of registered speakers.

Written statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by October 1, 2024, for consideration at the October 15–16, 2024, meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days before the meeting, to give the EPA as much time as possible to process your request.

V Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2024–21038 Filed 9–16–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–22–005, Commercial Fishing Occupational Safety Research Cooperative Agreement; and RFA–OH–22–006, Commercial Fishing Occupational Safety Training Project Grants.

Date: October 22, 2024.

Time: 12 p.m.–4 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Laurel Garrison, M.P.H., Scientific Review Officer, Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 5555 Ridge Avenue, Cincinnati, Ohio 45213. Telephone: (513) 533–8324; Email: LGarrison@cdc.gov.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–21103 Filed 9–16–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10003, CMS–10146, CMS–R–234 and CMS–222–17]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 17, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT:

William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a previously approved collection; *Title of Information Collection:* Notice of Denial of Medical Coverage (or Payment)—NDMCP; *Use:* Section 1852(g)(1)(B) of the Social Security Act (the Act) requires Medicare health plans to provide enrollees with a written notice in understandable language of the reasons for the denial and a description of the applicable appeals processes. Regulatory authority for this notice is set forth in subpart M of part 422 at 42 CFR 422.568, 422.572, 417.600(b), and 417.840.

Medicare health plans, including Medicare Advantage plans, cost plans, and Health Care Prepayment Plans (HCPPs), are required to issue form CMS-10003 to Medicare Advantage plan enrollees when a request for either a medical service or payment is denied in whole or in part. The notice explains to the enrollee why the plan denied the service or payment and informs Medicare enrollees of their appeal rights. *Form Number:* CMS-10003 (OMB control number: 0938-0829); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 970; *Total Annual Responses:* 18,232,560; *Total Annual Hours:* 3,037,544. (For policy questions regarding this collection contact Sabrina Edmonston at (410) 786-3209.)

2. *Type of Information Collection Request:* Revision of a previously

approved collection; *Title of Information Collection:* Notice of Denial of Medicare Prescription Drug Coverage; *Use:* Part D plan sponsors are required to issue the Notice of Denial of Medicare Prescription Drug Coverage notice when a request for a prescription drug or payment is denied, in whole or in part. The written notice must include a statement, in understandable language, the reasons for the denial and a description of the appeals process.

The purpose of this notice is to provide information to enrollees when prescription drug coverage has been denied, in whole or in part, by their Part D plans. The notice must be readable, understandable, and state the specific reasons for the denial. The notice must also remind enrollees about their rights and protections related to requests for prescription drug coverage and include an explanation of both the standard and expedited redetermination processes and the rest of the appeal process. *Form Number:* CMS-10146 (OMB control number: 0938-0976); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 772; *Total Annual Responses:* 2,962,857; *Total Annual Hours:* 740,714. (For policy questions regarding this collection contact Coretta Edmonston at (410) 786-0512.)

3. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Subpart D-Private Contracts and Supporting Regulations; *Use:* Section 4507 of the Balanced Budget Act of 1997 (BBA 1997) amended section 1802 of the Social Security Act (the Act) to permit certain physicians and practitioners to opt-out of Medicare and to provide—through private contracts—services that Medicare would otherwise cover. Under such contracts, the mandatory claims submission and limiting charge rules of section 1848(g) of the Act would not apply. CMS-R-234 allows certain physicians and practitioners to opt out of Medicare and furnish covered services to Medicare beneficiaries through private contracts. Physicians and practitioners use this information collection to comply with the applicable regulations. Physicians and practitioners entering private contracts with beneficiaries must file an affidavit with Medicare in which they agree to opt-out of Medicare for 2 years and to meet certain other criteria. In general, the applicable regulations require that during that 2-year period, physicians and practitioners who have filed affidavits opting out of Medicare must sign private contracts with all Medicare

beneficiaries to whom they furnish services that Medicare would otherwise cover (except those who need emergency or urgently needed care). In addition, Medicare Administrative Contractors (MACs) use this information to determine if benefits should be paid or continued. *Form Number:* CMS-R-234 (OMB control number: 0938-0730); *Frequency:* Occasionally; *Affected Public:* Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 78,258; *Total Annual Responses:* 78,258; *Total Annual Hours:* 22,780. (For policy questions regarding this collection contact Frank Whelan at 410-786-1302.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Rural Health Clinic Cost Report; *Use:* Under the authority of sections 1815(a) and 1833(e) of the Social Security Act, CMS requires that providers of services participating in the Medicare program submit information to determine costs for health care services rendered to Medicare beneficiaries. CMS requires that providers follow reasonable cost principles under 1861(v)(1)(A) of the Act when completing the Medicare cost report. Regulations at 42 CFR 413.20 and 413.24 require that providers submit acceptable cost reports on an annual basis and maintain sufficient financial records and statistical data, capable of verification by qualified auditors. CMS requires Form CMS-222-17 to determine an RHC's reasonable costs incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or from an RHC. Each RHC submits the cost report to its contractor for a reimbursement determination. Section 1874A of the Act describes the functions of the contractor.

CMS regulations at 42 CFR 413.24(f)(4)(ii) require each RHC submit an annual cost report to their contractor in American Standard Code for Information Interchange (ASCII) electronic cost report (ECR) format. RHCs submit the ECR file to contractors using a compact disk (CD), flash drive, or the CMS approved Medicare Cost Report E-filing (MCREF) portal. *Form Number:* CMS-222-17 (OMB control number: 0938-0107); *Frequency:* Yearly; *Affected Public:* Private Sector, State, Local, or Tribal Governments, Federal Government, Business or other for-profits, Not-for-profits institutions; *Number of Respondents:* 2,101; *Total Annual Responses:* 2,101; *Total Annual Hours:* 115,555. (For policy questions

regarding this collection contact LuAnn Piccione at (410) 786-5423.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024-21063 Filed 9-16-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-R-297/CMS-L564 and CMS-2088-17]

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 November 18, 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-R-297/CMS-L564 Medicare Request for Employment Information CMS-2088-17 The Community Mental Health Center Cost Report

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 Collections

1. *Type of Information Collection Request:* Extension of a currently approved information collection; *Title of Information Collection:* Medicare Request for Employment Information; *Use:* Section 1837(i) of the Social Security Act (the Act) provides for a

SEP for individuals who delay enrolling in Medicare Part B because they are covered by a group health plan based on their own or a spouse's current employment status. Disabled individuals with Medicare may also delay enrollment because they have large group health plan coverage based on their own or a family member's current employment status. When these individuals apply for Medicare Part B, they must provide proof that the group health plan coverage is (or was) based on current employment status. Form CMS L564 provides this proof so that SSA can determine eligibility for the SEP. Individuals eligible for the SEP can enroll in Part B without incurring a late enrollment penalty (LEP). Individuals may also use this form to prove that their group health plan coverage is based on current employment status and to have the assessed Medicare LEP reduced. *Form Number:* CMS-R-297/CMS-L564 (OMB control number: 0938-0787); *Frequency:* Annually; *Affected Public:* Individuals or households, Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 594,998; *Total Annual Responses:* 594,998; *Total Annual Hours:* 243,949. (For policy questions regarding this collection contact Candace Carter at 410-786-8466 or Candace.Carter@cms.hhs.gov.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Community Mental Health Center Cost Report *Use:* CMS requires the Form CMS-2088-17 to determine a provider's reasonable cost incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or from a provider. In addition, CMHCs may receive reimbursement through the cost report for Medicare reimbursable bad debts. CMS uses the Form CMS-2088-17 for rate setting; payment refinement activities, including market basket analysis; Medicare Trust Fund projections; and to support program operations. The primary function of the cost report is to determine provider reimbursement for services rendered to Medicare beneficiaries. Each CMHC submits the cost report to its contractor for reimbursement determination.

Section 1874A of the Act describes the functions of the contractor. CMHCs must follow the principles of cost reimbursement, which require they maintain sufficient financial records and statistical data for proper determination of costs. The S series of worksheets collects the provider's location, CBSA, date of certification, operations, and unduplicated census

days. The A series of worksheets collects the provider's trial balance of expenses for overhead costs, direct patient care services, and non-revenue generating cost centers. The B series of worksheets allocates the overhead costs to the direct patient care and non-revenue generating cost centers using functional statistical bases. The Worksheet C computes the apportionment of costs between Medicare beneficiaries and other patients. The D series of worksheets are Medicare specific and calculate the reimbursement settlement for services rendered to Medicare beneficiaries. The Worksheet F collects the provider's revenues and expenses data from the provider's income statement. *Form Number: CMS-2088-17* (OMB control number: 0938-0378); *Frequency: Annually; Affected Public: Private Sector, Business or other for-profits, Not-for-profits institutions; Number of Respondents: 191; Total Annual Responses: 191; Total Annual Hours: 17,190.* (For policy questions regarding this collection contact Jill Keplinger at 410-786-4550.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024-21055 Filed 9-16-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3465-PN]

Medicare and Medicaid Programs; Application From the Accreditation Commission for Health Care, Inc. (ACHC) for Continued Approval of Its Home Health Agency Accreditation Program

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

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of an application from the Accreditation Commission for Health Care, Inc. (ACHC) for continued recognition as a national accrediting organization for home health agencies (HHAs) that wish to participate in the Medicare or Medicaid programs. The statute requires that within 60 days of receipt of an organization's complete application, the Centers for Medicare & Medicaid Services (CMS) must publish a notice

that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 17, 2024.

ADDRESSES: In commenting, refer to file code CMS-3465-PN.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3465-PN, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3465-PN, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Erin Imhoff (410) 786-2337.

Lillian Williams (410) 786-8636.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a home health agency (HHA), provided certain requirements are met. Sections 1861(m) and (o), 1891 and 1895 of the Social Security Act (the Act) establish distinct criteria for an entity seeking designation as an HHA. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities and other entities are at 42 CFR part 488. The regulations at 42 CFR parts 409 and 484 specify the conditions that an HHA must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for home health care.

Generally, to enter into a provider agreement with the Medicare program, an HHA must first be certified by a state survey agency as complying with the conditions or requirements set forth in 42 CFR part 484 of our regulations. Thereafter, the HHA is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements.

However, there is an alternative to surveys by state agencies. Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of Health and Human Services as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for CMS approval of their accreditation program under 42 CFR part 488, subpart A, must provide CMS with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require accrediting organizations to reapply for continued approval of their accreditation program every 6 years or sooner as determined by CMS.

Accreditation Commission for Health Care, Incorporated's (ACHC's) term of approval for their HHA accreditation program expires February 24, 2025.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, a description of the nature of the request, and provision of at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of ACHC's request for continued CMS approval of its HHA accreditation program. This notice also solicits public comment on whether ACHC's requirements meet or exceed the Medicare conditions of participation (CoPs) for HHAs.

III. Evaluation of Deeming Authority Request

ACHC submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its HHA accreditation program. This application was determined to be complete on July 29, 2024. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of ACHC will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of ACHC's standards for HHAs as compared with CMS' HHA CoPs.

- ACHC's survey process to determine the following:

- ++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

- ++ The comparability of ACHC's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited HHAs.

- ++ ACHC's processes and procedures for monitoring HHAs found out of compliance with ACHC's program requirements. These monitoring procedures are used only when ACHC identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the state survey agency monitors corrections as specified at § 488.9(c).

- ++ ACHC's capacity to report deficiencies to the surveyed HHAs and respond to the HHA's plan of correction in a timely manner.

- ++ ACHC's capacity to provide us with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

- ++ The adequacy of ACHC's staff and other resources, and its financial viability.

- ++ ACHC's capacity to adequately fund required surveys.

- ++ ACHC's policies with respect to whether surveys are announced or unannounced, to ensure that surveys are unannounced.

- ++ ACHC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

- ++ ACHC's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this notice. Upon completion of our

evaluation, including evaluation of comments received because of this notice, we will publish a final notice in the **Federal Register** summarizing our response to comments and announcing the result of our evaluation.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Chyana Woodyard, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Chyana Woodyard,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024-21014 Filed 9-16-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2014-D-1492]

Chemistry, Manufacturing, and Controls Technical Section Filing Strategies; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry (GFI) #227 entitled "Chemistry, Manufacturing, and Controls (CMC) Technical Section Filing Strategies." This draft guidance provides recommendations to sponsors submitting CMC data submissions to new animal drug applications. This guidance describes the options for soliciting early input from the Center for Veterinary Medicine (CVM) and the process for submission of components of the CMC technical section.

DATES: Submit either electronic or written comments on the draft guidance by November 18, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically,

including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2014-D-1492 for "Chemistry, Manufacturing, and Controls (CMC) Technical Section Filing Strategies." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information

redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV-6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Heather Longstaff, Center for Veterinary Medicine (HFV-147), Food and Drug Administration, 7500 Standish Pl., Rockville MD 20855, 240-402-0651, Heather.Longstaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of draft GFI #227 entitled "Chemistry, Manufacturing, and Controls (CMC) Technical Section Filing Strategies." This guidance provides recommendations to sponsors submitting CMC data submissions to new animal drug applications. This draft guidance replaces final GFI #227, issued September 2015, entitled "Two-Phased Chemistry, Manufacturing, and Controls (CMC) Technical Sections."

There are several mechanisms to receive input from CVM prior to

submission of the CMC technical section, as well as various approaches to submitting the CMC technical section itself. For review efficiency, CVM prefers that full CMC information be provided in a single technical section submission.

However, there may be instances when submission of the individual components of the technical section (drug product, drug substance, and facility sterile process validation information for sterile drug products) could reduce the overall time to complete a technical section, and therefore drug approval. This guidance describes the options for soliciting early input from CVM and the process for submission of components of the CMC technical section.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Chemistry, Manufacturing, and Controls (CMC) Technical Section Filing Strategies." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521). The collections of information in 21 CFR part 514 have been approved under OMB control numbers 0910-0032; the collections of information in 21 CFR 511.1 have been approved under OMB control number 0910-0117; and the collections of information in sections 512(b) and 512(n) of the Federal Food, Drug, and Cosmetic Act have been approved under OMB control number 0910-0669.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: September 10, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20924 Filed 9–16–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–3924]

Digital Health Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Total Product Lifecycle Considerations for Generative Artificial Intelligence-Enabled Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Digital Health Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The Committee will discuss total product lifecycle considerations for Generative Artificial Intelligence (AI)-enabled devices. The meeting will be open to the public. FDA is establishing a docket for public comment on this topic.

DATES: The meeting will be held on November 20–21, 2024, from 9 a.m. to 6 p.m. eastern time.

ADDRESSES: Holiday Inn Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD 20879. The hotel's telephone number is 301–948–8900. The hotel's link can be found at: <https://www.ihg.com/holidayinn/hotels/us/en/gaithersburg/wasrv/hoteldetail>. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2024–N–3924. The docket will close on January 21, 2025. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 21, 2025. Comments received by mail/hand delivery/courier (for written/paper

submissions) will be considered timely if they are received on or before that date.

Comments received on or before November 1, 2024, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is canceled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2024–N–3924 for “Digital Health Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.” Received

comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT:

James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5221, Silver Spring, MD 20993–0002, 301–796–6313, James.Swink@fda.hhs.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously

announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On November 20 and 21, 2024, the Committee will discuss how the use of Generative AI may impact safety and effectiveness of medical devices enabled with this technology. The Committee will discuss premarket performance evaluation, risk management, and postmarket performance monitoring for Generative AI-enabled devices.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting and the background material will be posted on FDA's website after the meeting. Background material will be available at the location of the advisory committee meeting and at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before November 1, 2024, will be provided to the Committee. Oral presentations from the public will be scheduled November 20, 2024, between approximately 1 p.m. and 2 p.m. Eastern Time and November 21, 2024, between approximately 9:15 a.m. and 10:45 a.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 25, 2024. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine

the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 26, 2024. Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at fdaoma@fda.hhs.gov or 301-796-4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Ann Marie Williams, at Annmarie.Williams@fda.hhs.gov or 301-796-5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*).

Dated: September 12, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-21074 Filed 9-16-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-3163]

Considerations for Generating Clinical Evidence From Oncology Multiregional Clinical Development Programs; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Considerations for Generating Clinical Evidence From Oncology Multiregional Clinical Development Programs." This draft guidance provides recommendations to sponsors who are planning global clinical development programs for drugs intended to treat cancer, on improving the evidence obtained from one or more multiregional clinical trials (MRCTs) intended to support a marketing

application. This draft guidance expands on principles described in FDA's existing guidance documents related to this topic, by providing additional recommendations for the planning, design, conduct, and analysis of an oncology MRCT that may facilitate FDA's assessment of applicability of the data to the U.S. population with the cancer being investigated and to U.S. medical practice.

DATES: Submit either electronic or written comments on the draft guidance by November 18, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-

2024–D–3163 for “Considerations for Generating Clinical Evidence From Oncology Multiregional Clinical Development Programs.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of

Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lola Fashoyin-Aje, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 240–402–0205; or Sandra Casak, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2200, Silver Spring, MD 20993, 301–796–3812; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Considerations for Generating Clinical Evidence From Oncology Multiregional Clinical Development Programs.” This draft guidance is intended for sponsors who are planning global oncology clinical development programs for drugs to support a marketing application. The paramount consideration for FDA when evaluating MRCTs is whether the results are applicable to the intended use population in the United States, and to U.S. standard oncological care. Therefore, when planning a multiregional clinical development program, which includes all clinical trials intended to support approval in the United States, including the pivotal trials, the evidence generated should be derived from study populations that enable the results to be interpretable in the context of U.S. patients with the disease or condition and U.S. medical practice.

FDA is providing more detailed recommendations for MRCTs conducted to provide the evidence to support the safe and effective use of cancer drugs in the U.S. population. This guidance expands on principles described in FDA’s existing guidance documents related to this topic, by providing additional recommendations for the planning, design, conduct, and analysis of an oncology MRCT that may facilitate FDA’s assessment of applicability of the data to the U.S. population with the

cancer being investigated and to U.S. medical practice.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Considerations for Generating Clinical Evidence From Oncology Multiregional Clinical Development Programs.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: September 11, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20995 Filed 9–16–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Arunoday K. Bhan, Ph.D. (Respondent), who was formerly a Research Fellow, Department of Pediatrics, Boston Children’s Hospital (BCH), Harvard

Medical School (HMS), and a former Staff Scientist, Department of Surgery, City of Hope Medical Center (COH). Respondent engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grant T32 HL066987. The questioned research was included in two grant applications submitted for PHS funds, specifically R03 CA270990-01 and R21 CA272364-01 submitted to the National Cancer Institute (NCI), NIH. The administrative actions, including supervision for a period of four (4) years, were implemented beginning on August 21, 2024, and are detailed below.

FOR FURTHER INFORMATION CONTACT:

Sheila Garrity, JD, MPH, MBA, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453-8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Arunoday K. Bhan, Ph.D., Boston Children's Hospital, Harvard Medical School and City of Hope Medical Center: Based on the report of an investigation conducted by HMS and COH and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Arunoday K. Bhan (Respondent), former Research Fellow, Department of Pediatrics, BCH, HMS, and a former Staff Scientist, Department of Surgery, COH, engaged in research misconduct in research supported by PHS funds, specifically NHLBI, NIH, grant T32 HL066987. The questioned research was included in two (2) grant applications submitted for PHS funds, specifically R03 CA270990-01 and R21 CA272364-01 submitted to the National Cancer Institute (NCI), NIH.

ORI found that Respondent engaged in research misconduct by intentionally and knowingly falsifying, fabricating, and/or plagiarizing data in the following one (1) published paper and two (2) grant applications:

- Human induced pluripotent stem cell-derived platelets loaded with lapatinib effectively target HER2+ breast cancer metastasis to the brain. *Sci Rep.* 2021 Oct 15;11(1):16866. doi: 10.1038/s41598-021-96351-2 (hereafter referred to as *Sci Rep.* 2021). Retraction in: *Sci Rep.* 2024 Mar 12;14(1):5972. doi: 10.1038/s41598-024-56291-z.

- R03 CA270990-01, "Human induced pluripotent stem cell derived platelets and platelet derived extracellular vesicles mediated delivery of chemotherapeutics for breast to brain

metastasis treatment," submitted to NCI, NIH, on June 15, 2021 (hereafter referred to as R03 CA270990-01).

- R21 CA272364-01, "Off-the-shelf engineered human induced pluripotent stem cell derived platelets mediated delivery of HER2 inhibitors for HER2+ Breast to brain metastasis tumors immunotherapy," submitted to NCI, NIH, on September 29, 2021 (hereafter referred to as R21 CA272364-01).

Specifically, ORI found that Respondent intentionally and knowingly falsified, fabricated, and/or plagiarized:

- Figure 2D of *Sci Rep.* 2021, Figure 4A of R03 CA270990-01, and Figure 4A of R21 CA272364-01 by relabeling the transmission electron microscopy (TEM) image as Lapatinib-loaded platelet derived from the commercially available human induced pluripotent stem cell (hiPSC) line DF-19-9-7T when it was actually from a non-drug loaded platelet derived from a human donor sample, without appropriate citation to the researcher who generated the image

- Supplementary Figure SIB of *Sci Rep.* 2021 by relabeling the fluorescence microscopy images as from a culture of the hiPSC line DF-19-9-7T when these were actually from a derivative of the hiPSC line 1157 .2, without appropriate citation to the researcher who generated the image

- Supplementary Figure SIE of *Sci Rep.* 2021 by relabeling the TEM image as from a megakaryocyte on day 6 of maturation obtained directly by differentiation of the hiPSC line DF-19-9-7T when it was actually from an immortalized megakaryocyte cell line (four days after doxycycline-withdrawal induction of differentiation) previously derived from hiPSC line 1156

- Supplementary Figure S1C of *Sci Rep.* 2021 by relabeling the karyotype image as from the hiPSC line DF-19-9-7T when it was actually from the hiPSC line 1156, without appropriate citation to the researcher who generated the image

Respondent entered into a Voluntary Settlement Agreement (Agreement) and voluntarily agreed to the following:

(1) Respondent will have his research supervised for a period of four (4) years beginning with the effective date of the Agreement (the "Supervision Period"). Prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity in PHS-supported research, Respondent will submit a plan for supervision of Respondent's duties to ORI for approval. The supervision plan must be designed to ensure the integrity

of Respondent's research. Respondent will not participate in any PHS-supported research until such a supervision plan is approved by ORI. Respondent will comply with the agreed-upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

- A committee of 2-3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for a period of four (4) years from the effective date of the Agreement. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

- The committee will conduct an advance review of each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application, report, manuscript, or abstract are supported by the research record.

(3) During the Supervision Period, Respondent will ensure that any institution employing him submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI and the PHS funding agency that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract.

(4) If no supervision plan is provided to ORI, Respondent will provide certification to ORI at the conclusion of the Supervision Period that his participation was not proposed on a research project for which an application for PHS support was submitted and that he has not participated in any capacity in PHS-supported research.

(5) During the Supervision Period, Respondent will exclude himself voluntarily from serving in any advisory or consultant capacity to PHS including, but not limited to, service on any PHS

advisory committee, board, and/or peer review committee.

Dated: September 10, 2024.

Sheila Garrity,

Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2024–21016 Filed 9–16–24; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required).

Date: October 9, 2024.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Poonam Tewary, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892, (301) 761–7219, tewaryp@mail.nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 11, 2024.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Poonam Tewary, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892, (301) 761–7219 tewaryp@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 11, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21025 Filed 9–16–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Deafness and Other Communication Disorders Special Emphasis Panel; Conference Grant Applications Review.

Date: October 8, 2024.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, 301–402–3587, rayk@nidcd.nih.gov.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel NIDCD Clinical Research Center Grant (P50) Review

Date: November 8, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, 301–402–3587, rayk@nidcd.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 12, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21120 Filed 9–16–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 10, 2024.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, 3G58, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Anuja Mathew, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892, 301–761–6911, anuja.mathew@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 11, 2024.
Lauren A. Fleck,
*Program Analyst, Office of Federal Advisory
Committee Policy.*
[FR Doc. 2024–21024 Filed 9–16–24; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

National Institutes of Health

**Proposed Collection; 30-Day Comment
Request; Stakeholder Measures and
Advocate Forms at the National Cancer
Institute (NCI)**

AGENCY: National Institutes of Health,
HHS.
ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide the opportunity for public comment on proposed data collection projects, the National Institutes of Health, National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under 30-day

Review—Open for Public Comments” or using the search function.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact Amy Williams, Director of the Office of Advocacy Relations (OAR), NCI, NIH, 31 Center Drive, Bldg. 31, Room 10A28, MSC 2580, Bethesda, MD 20892, or call non-toll-free number 240–781–3406, or email your request, including your address, to amy.williams@nih.gov. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on May 30, 2024, page 46894 (89 FR 46894) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection Title:
Stakeholder Measures and Advocate Forms at the National Cancer Institute (NCI), 0925–0774, Expiration Date10/

31/2024, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This is a request for OMB to approve the revision of the collection titled “Stakeholder Measures and Advocate Forms at the National Cancer Institute (NCI)” for three additional years of data collection. The Office of Advocacy Relations (OAR) disseminates cancer-related information to various stakeholders, seeks input and feedback, and facilitates collaboration to advance NCI’s authorized programs. It is beneficial for NCI, through the OAR, to pretest strategies, concepts, activities, and materials while they are under development. Additionally, administrative forms are necessary for collecting demographic information and areas of interest for advocates. Since OAR is responsible for matching advocates to NCI programs and initiatives across the cancer continuum, it is necessary to measure the satisfaction of both internal and external stakeholders with this collaboration. This customer satisfaction research helps ensure the relevance, utility, and appropriateness of OAR and NCI’s many initiatives and products. Past research has enabled OAR to monitor stakeholder trends, design and develop materials based on user feedback, assess the impact of activities, and improve service delivery. Primary users are internal, with some advocates providing contact information, demographics, and prior advocacy experience via a link provided to them to input their data.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 17.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Individuals	Advocates Survey	6	1	5/60	1
Individuals	Requestor Survey	6	1	5/60	1
Individuals	Profile Completion	30	1	30/60	15
Total .....	.....	.....	42	.....	17

Dated: September 11, 2024.

Melissa M. Park,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2024–21059 Filed 9–16–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 30, 2024.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, 3G54, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Hitendra S. Chand, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G54, Rockville, MD 20892, (240) 627–3245, hiten.chand@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 11, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21023 Filed 9–16–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing 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 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 Nursing Research Special Emphasis Panel: NINR R25 Applications.

Date: October 17, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, NIDCR, NIH, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, nisan.bhattacharyya@nih.gov.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: October 22, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joshua R Wolff, Ph.D., Scientific Review Officer, Scientific Review Branch, 6701 Democracy Boulevard, Bethesda, MD 20817, (301) 793–5758, josh.wolff@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 12, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21122 Filed 9–16–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Public Collection of Information: Exercise Information System

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0057, abstracted below that we will submit to the Office of Management and Budget (OMB) for an extension in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden for the TSA Exercise Information System (EXIS®). EXIS® is a web portal that assists stakeholders to build and manage exercise planning teams, and share best practices & lessons learned. Using and inputting information into EXIS® is completely voluntary.

DATES: Send your comments by November 18, 2024.

ADDRESSES: Comments may be emailed to TSAPRA@dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone 571–227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with 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 valid OMB control number. The ICR documentation will be made available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652-0057; *Exercise Information System*. EXIS® is an internet-accessible knowledge-management system developed by TSA to serve its relevant stakeholders (such as members of the transportation industry, port authorities, Federal agencies, and State, local, territorial, and Tribal governments). EXIS® integrates security-related training and exercise components constituting sensitive security information (SSI).¹ It gives stakeholders valuable security exercise scenarios and objectives, best practices and lessons learned, and a repository of the users' own historical exercise data for use in future exercises. Transportation industry stakeholders can choose scenarios and objectives based on their vulnerabilities, mode of transportation, and the size of their operation.

TSA will collect five types of information through EXIS®. The collection is voluntary. While EXIS® users are not required to provide all information requested, if users choose to withhold information, they may not receive the benefits of EXIS® associated with that information collection.

1. *User registration information.* Because EXIS® includes SSI information, TSA must collect information upon registration to ensure only those members of the transportation community with a relevant interest in conducting security training exercises, and with an appropriate level of need to access security training information, are provided access to EXIS®.

TSA collects: The User's Name, Agency/Organization Name and Type, Job Title, Supervisor or other Sponsor's Name, Professional Phone Number, Professional Email Address, Employment Verification Contact Name, Employment Verification Contact Information, and the Reason for Needing an EXIS® account. In addition, the following optional registration information can be added by the user:

Professional (business), Country, City, State, Zip Code, Mobile Phone Number, Alternate Email, and Preferred Transportation Sector.

2. *Desired nature and scope of the exercise.* TSA collects this information to generate an EXIS® training exercise appropriate for the particular user. Users are asked to submit their desired transportation mode, exercise properties, objectives, scenario events, and participating agencies/attendees.

3. *Corrective actions/lessons learned/best practices.* TSA collects this information to document and share the users' ideas and methods for improving transportation security with other transportation stakeholders in the wider EXIS® user base. The TSA Intermodal Security Training and Exercise Program office may send lessons learned and best practices to subject matter experts within TSA for review. Once the information is reviewed, any company or user identifying information is removed and the content is published to the site for all users to access.

4. *Evaluation feedback.* TSA collects this information for the purpose of evaluating the usefulness of EXIS® in facilitating security training exercises for the users. TSA can then modify EXIS® to better suit its users' needs.

5. *After-Action Reports (AARs).* EXIS® automatically summarizes information from items (2) and (3) mentioned above in order to create formal AARs for users. These AARs include an exercise overview, goals and objectives, scenario event synopsis, analysis of critical issues, exercise design characteristics, conclusions, and the executive summary. The AAR is the output of the exercise process. Stakeholders use the report to identify strengths or areas in which they can assign resources to mitigate risk and enhance the security posture within their organization.

Based on industry population estimates and growth rates, and interest generated amongst the transportation modes during the years following EXIS's® release to the public, TSA estimates that the respondents will be approximately 16,713 full access and limited access users. TSA estimates a proportion of these respondents will participate; 2,006.7 full access users and 74.1 limited access users will spend approximately 3.5 hours per EXIS® user inputting the information described above, totaling, 7,282.7 burden hours. TSA estimates 12,065 limited access users will also spend approximately 0.25 hours completing a survey, totaling 3,016.3 burden hours. Given this information, the annual hourly burden for EXIS's® collection of information is 10,299 hours (7,282.7 + 3,016.3).

Dated: September 11, 2024.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2024-21050 Filed 9-16-24; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0105]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice of Entry of Appearance as Attorney or Accredited Representative

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 17, 2024.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS-2008-0037. All submissions received must include the OMB Control Number 1615-0105 in the body of the letter, the agency name and Docket ID USCIS-2008-0037.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721-3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

¹ SSI is information which, if publicly released, would be detrimental to transportation security, and is defined at 49 U.S.C. 114(r) and 49 CFR part 1520.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on July 27, 2023, at 88 FR 48489, allowing for a 60-day public comment period. USCIS did receive 160 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2008-0037 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

- (1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.
- (2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Accredited Representative.
- (3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G-28; G-28I; USCIS.
- (4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The data collected via the G-28 information collection instruments is used by DHS to determine eligibility of the individual to appear as a representative. Form G-28 is used by attorneys admitted to practice in the United States and accredited representatives of charitable organizations recognized by the Board of Immigration Appeals. Form G-28I is used by attorneys admitted to the practice of law in countries other than the United States and only in matters in DHS offices outside the geographical confines of the United States. If the representative is eligible, the form is filed with the case and the information is entered into DHS systems.
- (5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G-28 (paper filed) is 4,181,229 and the estimated hour burden per response is .940 hours; the estimated total number of respondents for the information collection G-28 (online filed) is 464,581 and the estimated hour burden per response is .783 hours; the estimated total number of respondents for the information collection G-28I (paper filed) is 31,362 and the estimated hour burden per response is .700 hours.
- (6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,316,022 hours.
- (7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$0.00. Individual forms where the USCIS Form G-28 is filed would generally include a value for costs incurred for attorney services, including filing USCIS Form G-28.

Dated: September 11, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division,
Office of Policy and Strategy, U.S. Citizenship
and Immigration Services, Department of
Homeland Security.

[FR Doc. 2024-21073 Filed 9-16-24; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0053]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Certification of Military or Naval Service

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 17, 2024.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS-2007-0016. All submissions received must include the OMB Control Number 1615-0053 in the body of the letter, the agency name and Docket ID USCIS-2007-0016.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721-3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the

USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on June 13, 2024, at 89 FR 50366, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2007-0016 in the search box. Comments must be submitted in English, or an English translation must be provided. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Certification of Military or Naval Service.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N-426; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Form N-426 is used by naturalization applicants to document honorable service in the U.S. Armed Forces. The form is filed with U.S. Citizenship and Immigration Services (USCIS) when the respondent applies for naturalization with USCIS Form N-400, Application for Naturalization (OMB Control Number 1615-0052). The Department of Defense (DOD) verifies and certifies the applicant's military or naval service information provided on Form N-426. USCIS reviews the form as part of the process to determine the applicant's eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection N-426 is 10,000 and the estimated hour burden per response is 0.50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 5,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$245,000.

Dated: September 12, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024-21101 Filed 9-16-24; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7080-N-47]

30-Day Notice of Proposed Information Collection; HUD Research, Evaluation, and Demonstration Cooperative Agreements; OMB Control No: 2528-0299

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.
ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* October 17, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410-5000; email PaperworkReductionActOffice@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Anna Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna.P.Guido@hud.gov or telephone (202) 402-3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 4, 2024 at 89 FR 47977.

A. Overview of Information Collection

Title of Information Collection: HUD Research, Evaluation, and Demonstration Cooperative Agreements.

MB Approval Number: 2528–0299.

Type of Request: Revision of currently approved collection.

Form Number: N/A.

Description of the Need for the Information and Proposed Use: PD&R intends to establish cooperative agreements with qualified for-profit and nonprofit research organizations and universities to conduct research, demonstrations, and data analysis. This information collection includes the post-award materials that cooperative agreement recipients will be required to

submit to PD&R over the course of the period of performance of their award. PD&R will use these deliverables to monitor the progress of the research being carried out under the cooperative agreement and to monitor the use of the funding and authorize payments to the awardee.

Respondent: For-profit and nonprofit organizations that are selected to receive an award under HUD's Research, Evaluation, and Demonstration Cooperative Agreements.

Information collection	Number of respondents	Annual responses	Total responses annually	Burden hours per response	Total burden hours	Salary	Total burden cost
Quality Control Plan	25	1	25	6.6	165	\$49.14	\$8,108.10
Management and Work Plan	25	1	25	13.2	330	49.14	16,216.20
Sustainability Plan	7	1	7	13.2	92.4	49.14	4,540.53
Research Design	29	1	29	52.8	1531.2	49.14	75,243.16
Quarterly Progress Reports	33	1	33	16	528	49.14	25,945.92
Final Research Report	33	1	33	79.2	2613.6	49.14	128,432.30
Final Narrative Report	33	1	33	1.65	54.45	49.14	2,675.67
Total					5,314.65		261,161.88

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Anna Guido,

*Department Reports Management Officer,
Office of Policy Development and Research,
Chief Data Officer.*

[FR Doc. 2024–21102 Filed 9–16–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number: FR–7092–N–37]

Privacy Act of 1974; Matching Program

AGENCY: Office of Administration, HUD.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) are providing notice of a new matching program between DOJ and HUD of data on judgments being collected by DOJ against individuals owing delinquent debts to the Federal Government for inclusion in a computer information system of HUD's, the Credit Alert Verification Reporting System (CAIVRS).

DATES: *Comments Due Date:* October 17, 2024. The matching program will commence not sooner than 30 days after publication of this notice, provided no

comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months and within 3 months of expiration may be renewed for one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the matching agreement.

ADDRESSES: Interested parties may submit comments as follows:

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: Department of Housing and Urban Development, Office of Single-Family Program Development, 451 Seventh Street SW, Room 9266, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Armand Curet, Program Analyst, Home Mortgage Insurance Division, Office of Single-Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington DC 20410, telephone (202) 402–4816, email armand.r.curet@hud.gov; telephone HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities.

To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION: This notice supersedes a similar notice published in the **Federal Register** on July 5, 2016, at 81 FR 43629. The Computer Matching program seeks to set forth the terms and conditions governing disclosures of records, information, or data (collectively referred to herein as “data”) made by DOJ to HUD. This data is obtained by DOJ and pertains to delinquent debt that individuals owe to DOJ. The purpose of its transmittal is to update the Credit Alert Verification Reporting System (CAIVRS), which is a computer information system maintained by HUD. The data match will allow for the prescreening of applicants for Federal direct loans or federally guaranteed loans, for the purpose of determining the applicant’s credit worthiness, by ascertaining whether the applicant is delinquent or in default on a loan owed directly to or guaranteed by the Federal Government. The terms and conditions of this Agreement ensure that DOJ makes such disclosures of data, and that HUD uses such disclosed data, in accordance with the requirements of the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act (CMPPA) of 1988, 5 U.S.C. 552a.

Participating Agencies

HUD is the recipient agency, and DOJ is the source agency.

Authority for Conducting the Matching Program

- The Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (Privacy Act);
- The Debt Collection Act of 1982, Public Law 97–365 (5 U.S.C. 5514; 31 U.S.C. 3701 et. seq.), as amended;
- The Debt Collection Improvement Act of 1996, Public Law 104–134 (5 U.S.C. 5514; 31 U.S.C. 3701 et. seq.);
- The Deficit Reduction Act of 1984, Section 2653 of Public Law 98–369 (26 U.S.C. 6402; 31 U.S.C. 3720a; and 3721);
- The Federal Credit Reform Act of 1990 (2 U.S.C. 661 et. seq.), as amended;
- The Federal Debt Collection Procedures Act of 1990, Public Law 101–647 (28 U.S.C. 3001 et. seq.);
- The Chief Financial Officers Act of 1990, Public Law 101–576 (31 U.S.C. 901 et. seq.), as amended;

- The Cash Management Improvement Act of 1990 (CMIA), Public Law 101–453, as amended by the Cash Management Improvement Act of 1992, Public Law 102–589; The Cash Management Improvement Act Amendments of 1992, Public Law 102–589;
- Executive Order 8248, “Establishing the divisions of the Executive Office of the President and defining their functions and duties,” Sept. 8, 1939;
- The Federal Information Security Management Act of 2002 (FISMA) (44 U.S.C. 3541, *et seq.*), as amended, and related National Institute of Standards and Technology (NIST) guidelines, which provide the requirements that the Federal Government must follow with regard to use, treatment, and safeguarding of data.
- Pre-existing common law authority to charge interest on debts and to offset payments to collect debts administratively (31 U.S.C. 3701, 3711–3720E, 3721); and 24 CFR 17.60 through 17.170.
- The Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989).
- DOJ Order 0904: Cybersecurity Program.

Purpose(s)

This agreement sets forth the respective responsibilities of HUD and DOJ in effecting the transfer of DOJ post judgment debtor data to CAIVRS. The CAIVRS debtor file contains the Social Security numbers (SSNs) of HUD’s delinquent debtors and defaulters, and the delinquent and defaulted debtor records of other federal agencies including the identification of the type of delinquent or defaulted loan. The objective of CAIVRS is to give program agencies and their authorized financial institutions access to a system that allows them to prescreen applicants for loans made or guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government.

Categories of Individuals

The categories of individuals whose information is involved in the matching program are delinquent federal debtors.

Categories of Records

The categories of records used in the matching program are the categories of records used in the matching program are debtor’s SSN, Agency, Program Code, Case number and Contact information.

System(s) of Records

HUD and DOJ SORNs used for purpose of the subject data exchanges include:

- Debt Collection Enforcement System, JUSTICE/DOJ–016. The notice for this system of records, including a routine use permitting this disclosure, was published in the **Federal Register** on March 25, 2017, (82 FR 24151, 154). The DOJ debtor files contain information on individuals or corporations with unsatisfied judgments.
- Credit Alert Verification System, HUD/HOU–04. The notice for this system of records, including a routine use permitting this disclosure, was published in the **Federal Register** on August 28, 2023 (88 FR 58595). CAIVRS is as a shared database of defaulted Federal debtors and enables processors of applications for Federal credit benefit to identify individuals who are in default or have had claims paid on direct or guaranteed Federal loans or are delinquent or other debts owed to Federal agencies.
- Financial Data Mart (FDM), A75R. The notice for this system of records, including a routine use permitting this disclosure, was published in the **Federal Register** on August 17, 2022 (87 FR 50640). FDM is a warehouse of data extracted from various HUD systems and is supported by several query tools for improved financial and program data reporting.

Bradley S. Jewitt,

Senior Agency Official for Privacy, Office of Administration.

[FR Doc. 2024–21113 Filed 9–16–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2024–0119;
FXES11140100000–245–FF01E00000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Olympia Pocket Gopher; Tumwater Operations and Maintenance Facility, Thurston County, WA; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from the City of Tumwater Transportation and Engineering Department (applicant) for an incidental

take permit (ITP) pursuant to the Endangered Species Act. The ITP would authorize the applicant's take of the federally threatened Olympia subspecies of the Mazama pocket gopher (*Thomomys mazama pugetensis*) ("covered species"), incidental to their otherwise lawful construction and infrastructure improvements at two locations in the City of Tumwater, Thurston County, Washington. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and categorical exclusion screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: Please submit written comments by October 17, 2024.

ADDRESSES:

Obtaining documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in on Docket No. FWS-R1-ES-2024-0119 at <https://www.regulations.gov>.

Submitting comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R1-ES-2024-0119.

- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS-R1-ES-2024-0119; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Kevin Connally, Washington Fish and Wildlife Office, by email at kevin_connally@fws.gov, or by telephone at 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: We, the U.S. Fish and Wildlife Service (Service), received an incidental take permit (ITP) application from the City of Tumwater pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The ITP, if issued, would authorize the incidental take of the Olympia pocket gopher (*Thomomys mazama pugetensis*) (covered species), resulting from otherwise lawful construction and infrastructure improvements at two locations in the City of Tumwater, Thurston County, Washington. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed permitting action may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and categorical exclusion screening form, both of which are also available for public review.

Background

Section 9 of the ESA prohibits the taking of fish and wildlife species listed as endangered or threatened. The ESA defines "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term "harm," as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Section 10(a)(1)(B) of the ESA contains provisions that authorize the Service to issue permits to non-Federal entities for the take of endangered and threatened species caused by otherwise lawful activities, provided the following criteria are met: (1) the taking will be incidental to, and not the purpose of, carrying out an otherwise lawful activity; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will ensure that adequate funding for the conservation plan will be provided; (4) the taking will

not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP. Regulations governing permits for threatened species are found at 50 CFR 17.32. The Service's general permitting regulations are found at 50 CFR part 13.

Proposed Project

The applicant proposes to construct and maintain seven new buildings, parking, access roads, a staging area for materials, a park and recreational features, a rain garden, landscaping, frontage improvements on 79th Avenue SE, and a roundabout and storm water facilities at the intersection of Old Highway 99 SE and 79th Ave. SE, and also to carry out other ground-disturbing activities described in the HCP. The 26.2-acre (ac) project site (permit area) contains a total of 8.6 ac of occupied Olympia pocket gopher habitat.

The proposed action is anticipated to impact up to 8.6 ac of Olympia pocket gopher habitat in the permit area. The applicant proposes to mitigate for unavoidable impacts to Olympia pocket gopher by use of 8.6 ac of credits in the Service-approved Deschutes Corridor conservation site purchased in 2017, which is currently occupied by the Olympia pocket gopher. The advance mitigation credit purchase was approved by the Service in 2017. The purchase of these credits fully funds the permanent management, monitoring, and adaptive management on 8.6 ac of the Deschutes Corridor conservation site. The conservation site will be managed for successful Olympia pocket gopher feeding, breeding, and sheltering.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's proposed project, including the construction of the buildings and associated infrastructure, would individually and cumulatively have a minor effect on the covered species and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual.

Public Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We specifically request

information, views, and suggestions from interested parties regarding our proposed Federal action, including, without limitation, adequacy of the HCP, whether the HCP meets requirements for permits at 50 CFR parts 13 and 17, and adequacy of the EAS pursuant to the requirements of NEPA.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. 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 at <https://www.regulations.gov>.

Next Steps

After the public comment period ends (see **DATES**), we will evaluate the permit application, associated documents, and any comments received to determine whether the permit application meets the requirements of section 10(a)(2)(B) of the ESA. We will also evaluate whether issuance of the requested permit would comply with section 7 of the ESA by conducting an intra-Service consultation under section 7(a)(2) of the ESA on the proposed action. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all comments received during the comment period. If we determine that all requirements are met, we will issue an ITP under section 10(a)(1)(B) of the ESA to the applicant for the take of the covered species, incidental to otherwise lawful covered activities.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4321 *et*

seq.) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Bridget Fahey,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2024–20625 Filed 9–16–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0026]

Atlantic Wind Lease Sale 11 for Commercial Leasing for Wind Power Development on the U.S. Gulf of Maine Outer Continental Shelf—Final Sale Notice

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final sale notice; request for comments.

SUMMARY: This Final Sale Notice (FSN) contains information pertaining to the areas available for commercial wind power leasing during Atlantic Wind Lease Sale 11 (ATLW–11) on the U.S. Outer Continental Shelf (OCS) in the Gulf of Maine. Specifically, this FSN details certain provisions and conditions of the leases, auction details, the lease form, criteria for evaluating competing bids, and procedures for award, appeal, and lease execution. The Bureau of Ocean Energy Management (BOEM) will offer eight leases for sale using an ascending clock auction with multiple-factor bidding: Lease OCS–A 0562, OCS–A 0563, OCS–A 0564, OCS–A 0565, OCS–A 0566, OCS–A 0567, OCS–A 0568, and OCS–A 0569 (lease areas). The first two lease areas (lease areas OCS–A 0562 and OCS–A 0563) comprise the North Region, and the remaining six lease areas comprise the South Region. Bidders are limited to bidding on no more than two lease areas at a time, and may not include in their bid more than one lease area in the North Region at a time. BOEM will use the BOEM Auction System for the lease sale. The lease areas are in the previously identified wind energy areas located in the Gulf of Maine offshore the States of Maine and New Hampshire and the Commonwealth of Massachusetts. The issuance of any lease resulting from this sale will not constitute approval of project-specific plans to develop offshore wind energy. Such plans, if submitted by the lessee, will be subject to environmental, technical, and public reviews prior to a BOEM decision on whether the proposed activity should be authorized.

DATES: BOEM will hold an online mock auction for potential bidders starting at 9:00 a.m. Eastern Daylight Time (EDT) on October 24, 2024. The monetary auction will be held online and will begin at 9:00 a.m. EDT on October 29, 2024. Additional details are provided in the section entitled, “Deadlines and Milestones for Bidders.”

FOR FURTHER INFORMATION CONTACT:

Zachary Jylkka, Bureau of Ocean Energy Management, Zachary.Jylkka@boem.gov or (978) 491–7732; or Gina Best, Bureau of Ocean Energy Management, Gina.Best@boem.gov or (703) 787–1341.

SUPPLEMENTARY INFORMATION:

I. Background

a. *Request for Interest (RFI):* On August 19, 2022, BOEM published an RFI for the Gulf of Maine in the **Federal Register** (see 87 FR 51129). BOEM received 51 unique comments on the RFI. Five developers nominated areas for a commercial wind energy lease within the RFI Area.

b. *Call for Information and Nominations (Call):* On April 26, 2023, BOEM published a “Call for Information and Nominations for Commercial Leasing for Wind Power Development on the Gulf of Maine” (see 88 FR 25427). BOEM received 127 unique comments on the Call. Seven developers nominated areas for a commercial wind energy lease within the Call Area.

c. *Area Identification (Area ID):* An Area ID determination is a required regulatory step under the renewable energy competitive leasing process used to identify areas for environmental analysis and consideration for leasing. After the close of the Call comment period, BOEM initiated the Area ID process using information and input from stakeholders received up to that point.

BOEM and the National Oceanic and Atmospheric Administration’s (NOAA) National Centers for Coastal Ocean Science (NCCOS) collaborated in employing an ocean planning tool (the NCCOS model) to help identify an area that appears suitable for floating offshore wind energy leasing and development in the Gulf of Maine. The Area ID process seeks to identify and minimize potential conflicts in ocean space as well as to mitigate interactions with other users and adverse interactions with the environment; the NCCOS model supports that effort. BOEM employed the NCCOS model during two distinct steps of the Area ID process: first, to model relative suitability within the boundaries of the Call Area to identify the draft Wind Energy Area (WEA); and second, to

model the relative suitability within the boundaries of the draft WEA. After modifying the Area ID process in a Notice to Stakeholders, which is available at <https://www.boem.gov/newsroom/notes-stakeholders/boem-enhances-its-processes-identify-future-offshore-wind-energy-areas>, on October 19, 2023, BOEM announced the Gulf of Maine draft WEA and opened a 30-day public comment period. The methodology used to delineate the Gulf of Maine draft WEA is outlined in the “Draft NCCOS Report: A Wind Energy Area Siting Analysis for the Gulf of Maine Call Area.”¹ The draft WEA covered approximately 3.5 million acres. BOEM considered the following non-exclusive information sources when identifying the draft WEA: comments and nominations received on the Call; information from the Gulf of Maine Intergovernmental Renewable Energy Task Force (Task Force); input from federally recognized Tribes; input from State and federal agencies; comments from stakeholders and ocean users, including the maritime community, offshore wind developers, and the commercial and recreational fishing industry; input from state and local governments on renewable energy goals; and information on domestic and global offshore wind market and technological trends.

BOEM completed the Area ID process after considering additional input received from stakeholders during the draft WEA comment period. BOEM published the final WEA on March 15, 2024. The final WEA comprises approximately 2 million acres and represents an 80% reduction from the size of the Call Area and a 43% reduction from the draft WEA. The final WEA has the potential to support generation of 32 gigawatts (GW) of clean energy, surpassing current State goals for offshore wind energy in the Gulf of Maine (13–18 GW, based on Massachusetts’ and Maine’s offshore wind goals and estimates provided by the regional grid operator, ISO-New England). The size of the final WEA allows BOEM to consider additional ways to reduce conflicts with users and resources, while also supporting the region’s renewable energy goals. For additional information, the Gulf of Maine Area ID documentation can be found at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>.

d. *Proposed Sale Notice*: On April 30, 2024, BOEM announced the Proposed Sale Notice (PSN) for the Gulf of Maine, which initiated a 60-day comment period lasting from May 1, 2024, through July 1, 2024. The eight proposed lease areas totaled 969,999 acres (944,422 developable acres), accounting for approximately half of the final WEA. In identifying these areas from the final WEA, BOEM prioritized avoidance of offshore fishing grounds and identification of vessel transit routes, while retaining sufficient acreage to support the region’s offshore wind energy goals (13–18 GW based on information from Massachusetts, Maine, and ISO-New England). BOEM conducted several meetings focused primarily on the PSN, including: five virtual public meetings; one virtual meeting with Gulf of Maine Tribes; four in-person public meetings; and one in-person Task Force meeting. Additional information on these meetings is located on the BOEM website: <https://www.boem.gov/renewable-energy/state-activities/gulf-maine-proposed-sale-notice-psn-public-meetings>.

e. *Environmental Reviews*: On March 18, 2024, BOEM published a notice of intent to prepare an environmental assessment (EA) to consider potential environmental impacts of site characterization activities (e.g., biological, archaeological, geological, and geophysical surveys and core samples) and site assessment activities (e.g., installation of meteorological buoys) that are expected to take place after issuance of wind energy leases (89 FR 19354). When scoping the EA, BOEM sought comments on the issues and alternatives that should inform the EA. BOEM received 38 comment submissions, which can be found at <https://www.regulations.gov> in docket no. BOEM–2024–0020. On June 21, 2024, BOEM published a notice of availability (NOA) of a draft EA in the **Federal Register** (89 FR 52086). BOEM received 164 comment submissions, which can be found at <https://www.regulations.gov> in docket no. BOEM–2024–0030. In addition to the preparation of the draft EA, BOEM has initiated required consultations under the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), and the Coastal Zone Management Act. The draft EA can be found at <https://www.boem.gov/renewable-energy/state-activities/gomeclea>. On September 9, 2024, BOEM published a NOA of a final EA in the **Federal Register** (Docket Number BOEM–2024–0030). The final EA can be

found here: <https://www.boem.gov/renewable-energy/state-activities/gome-FinalEA>. BOEM completed ESA consultation with the U.S. Fish and Wildlife Service on August 26, 2024. Consultation with the National Marine Fisheries Service (NMFS) for MSFCMA and ESA have not been completed prior to publication of this notice. BOEM has provided NMFS with a Biological Assessment for ESA consultation and an Essential Fish Habitat Assessment for MSFCMA consultation. Based on the assessments that BOEM prepared for these consultations, BOEM does not expect impacts that are significantly different in kind or magnitude from those it has identified in previous wind lease sales. BOEM will not execute any leases in the Gulf of Maine prior to the completion of all consultations. The EA and associated consultations informed BOEM’s decision on whether to proceed with this FSN. BOEM will conduct additional environmental reviews upon receipt of a lessee’s construction and operations plan (COP) if leases issued as a result of this sale reach that stage of development.

II. List of Eligible Bidders

BOEM has determined that the following 14 entities are legally, technically, and financially qualified to bid in the ATWL–11 auction, pursuant to 30 CFR 585.107 and 585.108:

Company name	Company No.
Avangrid Renewables, LLC ..	15019
Equinor Wind US LLC	15058
US Mainstream Renewable Power Inc	15089
Diamond Wind North America, LLC	15113
Hexicon USA, LLC	15151
Seaglass Offshore Wind II, LLC	15155
TotalEnergies SBE US, LLC	15165
Pine Tree Offshore Wind, LLC	15167
energyRe Offshore Wind Holdings, LLC	15171
OW Gulf of Maine LLC	15175
Repsol Renewables North America, Inc	15180
Maine Offshore Wind Development LLC	15181
Corio USA Projectco LLC	15182
Invenergy NE Offshore Wind LLC	15197

a. *Affiliated Entities*: On the Bidder’s Financial Form (BFF), discussed in sections III(a)(i) and X below, eligible bidders must list any other eligible bidders with whom they are affiliated. For the purpose of identifying affiliated entities, a bidding entity is any individual, firm, corporation, association, partnership, consortium, or

¹ Available at https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Gulf_of_Maine_Draft%20WEA_Report_NCCOS_0.pdf.

joint venture (when established as a separate entity) that is participating in the same auction. BOEM considers bidding entities to be affiliated when:

i. They own or have common ownership of more than 50 percent of the voting securities, or instruments of ownership or other forms of ownership, of another bidding entity. Ownership of less than 10 percent of a bidding entity constitutes a presumption of non-control that BOEM may rebut.

ii. They own or have common ownership of between 10 and 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another bidding entity, and BOEM determines that there is control upon consideration of factors including the following:

a. The extent to which there are common officers or directors.

b. With respect to the voting securities, or instruments of ownership or other forms of ownership: The percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other bidding entities, if a bidding entity is the greatest single owner, or if there is an opposing voting bloc of greater ownership.

c. Shared ownership, operation, or day-to-day management of a lease, grant, or facility as those terms are defined in BOEM's regulations at 30 CFR 585.113.

iii. They are both direct, or indirect, subsidiaries of the same parent company.

iv. With respect to any lease(s) offered in this auction, they have entered into an agreement prior to the auction regarding the shared ownership, operation, or day-to-day management of such lease.

v. Other evidence indicates the existence of power to exercise control, such as evidence that one bidding entity has power to exercise control over the other, or that multiple bidders collectively have the power to exercise control over another bidding entity or entities.

Affiliated entities are not permitted to compete against each other in the auction. Where two or more affiliated entities have qualified to bid in the auction, the affiliated entities must decide prior to the auction which one (if any) will participate in the auction. If two or more affiliated entities attempt to participate in the auction, BOEM will disqualify those bidders from the auction.

III. Deadlines and Milestones for Bidders

This section describes the major deadlines and milestones in the auction process from publication of this FSN to execution of a lease issued pursuant to this sale.

a. *FSN Waiting Period:* During the period between FSN publication and the lease auction, qualified bidders must take several steps to remain eligible to participate in the auction.

i. *Bidder's Financial Form:* Each bidder must submit a BFF to BOEM to participate in the auction. The BFF must include each bidder's Conceptual Strategy for each bidding credit for which that bidder wishes to be considered. BOEM must receive each bidder's BFF on or before September 27, 2024, and it is each bidder's responsibility to ensure BOEM's timely receipt. If a bidder does not submit a BFF by this deadline, BOEM, in its sole discretion, may grant an extension to that bidder only if BOEM determines the bidder's failure to timely submit a BFF was caused by events beyond the bidder's control. The BFF can be downloaded at: <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. Once BOEM has processed a bidder's BFF, the bidder is allowed to log into pay.gov and submit a bid deposit. For purposes of this auction, BOEM will not consider BFFs submitted for previous lease sales. An original signed BFF may be mailed to BOEM's Office of Renewable Energy Programs. A signed copy of the form may be submitted via email in PDF format to renewableenergy@boem.gov. A faxed copy will not be accepted. BFF submissions should be accompanied with a transmittal letter on company letterhead. The BFF must be executed on paper with a wet signature or with a digital signature affixed by an authorized representative listed on the bidder's current legal qualification card on file with BOEM, subject to 18 U.S.C. 1001 (Fraud and False Statements). Further information about the BFF can be found in the "Bidder's Financial Form" Section X of this notice.

ii. *Bid Deposit:* Once BOEM has processed a BFF and provided the appropriate information to the Office of Natural Resources Revenue (ONRR), ONRR will populate the Bid Deposit Forms and notify the bidders of access to pay.gov for the bid deposits. The bidder must log into <https://www.pay.gov> to submit a bid deposit. To participate in the mock auction and the monetary auction, each qualified bidder must provide a bid deposit of \$2,000,000 per lease area sought for a

maximum of two lease areas no later than October 11, 2024. BOEM will grant extensions to this deadline only if BOEM, in its sole discretion, determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control. Further information about bid deposits can be found in the "Bid Deposit," Section X, of this notice.

b. *Conducting the Auction:*

i. *Affirmative Action:* Prior to bidding in the monetary auction, each bidder must file the Equal Opportunity Affirmative Action Representation Form BOEM-2032 (February 2020, available on BOEM's website at <http://www.boem.gov/BOEM-2032/>) and the Equal Opportunity Compliance Report Certification Form BOEM-2033 (February 2020, available on BOEM's website at <http://www.boem.gov/BOEM-2033/>) with the BOEM Office of Renewable Energy Programs. The forms can be submitted digitally via email to renewableenergy@boem.gov or mailed to the BOEM Office of Renewable Energy Programs. This certification is required by 41 CFR part 60 and Executive Order (E.O.) 11246, issued September 24, 1965, as amended by E.O. 11375, issued October 13, 1967, and by E.O. 13672, issued July 21, 2014. Both forms must be on file with BOEM for the bidder(s) prior to the execution of any lease contract.

ii. *Notification of Eligibility for Bidding Credits:* BOEM will notify each bidder of its eligibility for bidding credits prior to the Mock Auction.

iii. *Mock Auction:* BOEM will hold a Mock Auction on October 24, 2024, beginning at 9:00 a.m. EDT, which is open only to qualified bidders who have met the requirements and deadlines for auction participation, including submission of the bid deposit. The Mock Auction is intended to give bidders an opportunity to clarify auction rules, test the functionality of the auction software, and identify any potential issues that may arise during the auction.

iv. *The Auction:* On October 29, 2024, BOEM, through its contractor, will commence the multiple-factor auction. The first round of the auction will start at 9:00 a.m. EDT. The auction will proceed electronically according to a schedule to be distributed by the BOEM Auction Manager at the beginning of the auction, subject to any revisions (which will be communicated to bidders during the auction). BOEM anticipates that the auction will last one or two business days, but the auction may continue for additional business days, as necessary, until the auction ends in accordance with the procedures described in the

“Auction Procedures” section of this notice.

v. *Announce Provisional Winners:* BOEM will announce the provisional winners of the lease sale after the auction ends.

c. *From the Auction to Lease*

Execution:

i. *Refund Non-Winners:* Once the provisional winners have been announced, BOEM will provide the non-winners with a written explanation of why they did not win and will return their bid deposits.

ii. *Department of Justice (DOJ)*

Review: DOJ will have 30 days in which to conduct an antitrust review of the auction, pursuant to 43 U.S.C. 1337(c).

iii. *Delivery of the Lease:* BOEM will send three lease copies to each provisional winner, with instructions on how to execute the lease. Once the lease has been fully executed, a provisional winner becomes an auction winner. The first year's rent is due 45 calendar days after the auction winners receive the lease copies for execution.

iv. *Return the Lease:* Within ten business days of receiving the lease copies, the auction winners must post financial assurance, pay any outstanding balance of their winning bids (*i.e.*, winning cash bid less applicable bid deposits), and sign and return the three executed lease copies.

A winner may request in writing an extension of the 10-business-day time limit and BOEM, in its discretion, may grant such extensions, pursuant to 30 CFR 585.225(d).

v. *Execution of Lease:* Once BOEM has received the signed lease copies and verified that all other required materials have been received, BOEM will make a final determination regarding its issuance of the leases and will execute the leases, if appropriate.

IV. Areas Offered for Leasing

In response to comments received on the PSN and consultation with Tribes and Federal agencies, BOEM is offering eight lease areas totaling 850,082 acres for sale through this notice (Figure 1). The eight areas in the PSN have been reduced by approximately 12% to address ocean user conflicts in response to comments and input from ocean users, including the fishing industry, the U.S. Coast Guard (USCG) and navigation interests, and NMFS. BOEM's designation of the eight lease areas offered in the PSN is informed by extensive coordination with BOEM's intergovernmental task force members, consultation and engagement with Tribes, stakeholder engagement, a partnership with NOAA's NCCOS to utilize spatial modeling to inform the

identification of WEAs, and consideration of the 262 comments that BOEM received in response to the PSN. Based on the information gained through that coordination and comment review, BOEM has decided to remove from current leasing consideration several areas that overlap with a combination of offshore fishing activity, vessel transit, seafloor features identified by NMFS as potentially sensitive to impacts from offshore wind facility construction, and areas of relatively higher densities of North Atlantic right whale sightings and detections. The eight areas BOEM is offering for lease are described in Table 1. Descriptions of the proposed lease areas may be found in Addendum A of each of the proposed leases, located on BOEM's website at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. Several leases are subject to a lease stipulation that would prohibit surface or subsurface development in portions of the lease that are adjacent to corridors BOEM created between leases to facilitate existing and future vessel transit (see Addendum C, Section 10 of the lease). For those leases, the total “developable acres” are less than the total “lease acres” as described in Table 1.

TABLE 1—GULF OF MAINE LEASE AREAS, ACRES, AND ASSIGNED REGION

Lease area ID	Region	Total acres	Developable acres	Net change from PSN (developable acres)
OCS-A 0562	North	97,854	97,854	– 23,485
OCS-A 0563	North	105,682	105,682	– 26,687
OCS-A 0564	South	98,565	93,756	– 11,743
OCS-A 0565	South	103,191	103,191	– 12,099
OCS-A 0566	South	96,075	96,075	– 31,313
OCS-A 0567	South	117,780	113,208	– 4,183
OCS-A 0568	South	124,897	116,363	– 7,026
OCS-A 0569	South	106,038	101,757	0
Total .....	.....	850,082	827,886	– 116,536
Average .....	.....	106,260	103,486	– 14,567

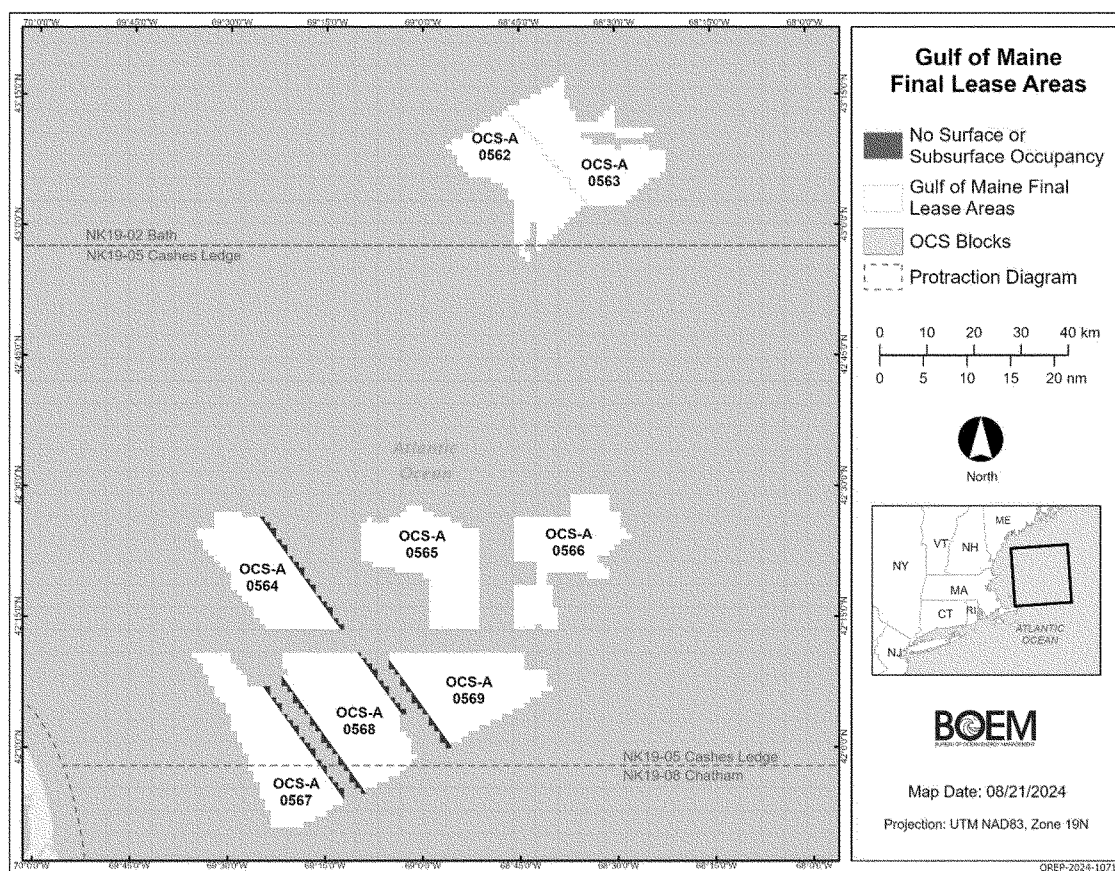


Figure 1—Gulf of Maine Lease Areas

a. *Habitat Avoidance:* Several commentors recommended BOEM remove proposed lease areas due to concerns about overlap with or proximity to sensitive benthic habitat. These comments contributed to the decision to remove the portions of four lease areas. Lease area 0562's (and to a lesser extent, 0563's) proximity to the Jeffreys Bank Habitat Management Area contributed to the decision to remove the northern portion of those lease areas. In addition, NMFS recommended BOEM avoid leasing in areas of potential hardbottom and high bathymetric change potentially suitable for coral habitat, as shown in the results of the spring 2024 R/V Connecticut surveys within lease areas 0567 and 0568. These data contributed to removals of acreage in the northeastern portion of 0567 and southeastern portion of 0568. BOEM also considered a comment from the wind industry requesting that BOEM focus any adjustments to lease boundaries on reductions to bathymetric heterogeneity.

b. *Facilitating Fishing Activity:* Throughout the Gulf of Maine planning and leasing process BOEM has prioritized avoidance of areas with high fishing vessel activity, revenue, and

landings. Understanding that the best available commercial and recreational fishing data still have limitations and caveats, BOEM has engaged extensively with the fishing industry, fishing communities, and Tribes to bolster BOEM's understanding of the historic and current uses of the lease areas. These engagements and data analyses, combined with PSN comments, contributed to the decision to remove portions of seven lease areas: northern portion of 0562 and 0563 (herring and groundfish fishing effort); western edge of 0564, eastern edge of 0565, western portion of 0566, northeastern portion of 0567, and northwestern portion of 0568 (groundfish fishing effort).

c. *Vessel Transit Considerations:* As noted in the PSN, BOEM is aware of the overlap of lease areas 0562 and 0563 (as proposed in the PSN) with a portion of the USCG proposed Gulf of Maine fairway as described in the Maine, New Hampshire, Massachusetts Port Access Route Study (MNMPARS). While that fairway has not yet been established, ongoing consultation with the USCG, along with comments received through the PSN regarding concerns with transit, North Atlantic right whale detections, fishing effort, and habitat concerns, all contributed to BOEM's decision to remove the portion of lease areas 0562

and 0563 that previously overlapped with the proposed fairway.

d. As part of the PSN, BOEM also created three corridors between leases to facilitate existing and future transit through proposed lease areas.² These areas occur in a Northwest to Southeast direction, as well as in an East and West direction, and have a minimum width of 2.5 nautical miles (nm). Commenters generally supported these transit areas; however, several commenters also requested corridors be created between lease areas 0562 and 0563, as well as between 0565 and 0566. BOEM did not incorporate a corridor between 0562 and 0563, given the lease areas' relative isolation (no immediate surrounding lease areas) and the reduction in lease area size due to the avoidance of the proposed Gulf of Maine fairway (described above). Additionally, the Surface Structure Layout and Orientation lease stipulation (see Addendum C, Section 10 of the lease) applies to lease areas 0562 and 0563. BOEM has removed portions of lease areas 0565 and 0566 creating an approximate 3.5 nm wide corridor

² BOEM does not have the authority to designate transit lanes. The United States Coast Guard's (USCG) authority to provide safe access routes for the movement of vessel traffic is found in the Ports and Waterways Safety Act. See 46 U.S.C. 70003.

primarily to facilitate existing groundfishing activities (see *Facilitating Fishing Activity* section, above); however, this will also facilitate future transit through those lease areas.

e. *Map of the Area Proposed for Leasing*: In addition to Figure 1, maps of the lease areas, and various GIS spatial files may be found on BOEM's website at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>.

V. New and Modified Lease Stipulations

BOEM has modified or added several lease stipulations in Addendum C of each lease related to avoiding and minimizing potential future user conflicts and environmental impacts and project design. This section summarizes the major updates, but is not an exhaustive list of every change.

a. *Changes related to the Modernization Rule*: Since the publication of the PSN, the Renewable Energy Modernization Rule (89 FR 42602) has become effective, resulting in updates to BOEM's regulations. As a result, BOEM has modified the lease form for this sale to comport with those new regulations in three ways: simple citation and language updates; removing references to lease "terms" and replacing them with references to lease "periods" under 30 CFR 585.235; and revising the stipulations in Addendum C to adhere to the EA's standard operating conditions in a regulatory scheme where a lessee is no longer required to submit a Site Assessment Plan to install a meteorological and/or oceanographic buoy under 30 CFR 585.600(a)(1).

b. *Surface Structure Layout and Orientation*: BOEM has modified the lease stipulation "Surface Structure Layout and Orientation" (see Addendum C, Section 10 of the lease), which requires lessees with directly adjacent leases (e.g., OCS-A 0562 and 0563) to design a surface structure layout that contains two common lines of orientation across the adjacent leases (as described in Navigation and Vessel Inspection Circular 02-23). If the lessees cannot agree on such a layout, each lessee would be required to incorporate a setback area from the boundary of the adjacent lease within which area surface and subsurface structures are prohibited.

Based on comments received on the PSN, BOEM has decided to increase the previous setback distance from 1 nm to 1.25 nm. This would create a minimum 2.5 nm distance between the proposed facilities of each lessee along the lease boundary. Given uncertainties with how

potential lessees will propose to construct their floating wind projects, BOEM reserves the right to require additional mitigations at the COP approval stage, including increases to this setback distance.³

The previous 1 nm setback distance was based on USCG recommendations to alert mariners and search and rescue operations of a layout change between adjacent leases, not to create a corridor for navigation. However, BOEM recognizes that if future leaseholders of lease areas 0562 and 0563 do not choose to implement two common lines of orientation, a de facto corridor would be created and, therefore, vessels would likely use it for navigation and potentially for fishing activities. Therefore, BOEM increased the setback distance and included a provision to prohibit surface and subsurface occupancy in those setback areas, so that the combined setback area matches the width and provisions of the BOEM designated corridors between the leases in the southern region of the final WEA.

c. *Habitat Impact Minimization Measures*: BOEM recognizes that there are documented deep sea coral locations within one of the lease areas (0567),⁴ and recent surveys conducted by NOAA in spring 2024 indicated there may be additional habitat suitable for corals in lease areas 0567 and 0568. In response to these data, as well as PSN comments related to protection of living bottom habitat, BOEM has included a new lease stipulation requiring lessees to use the best available information to avoid and minimize bottom-disturbing activities to sensitive biological resources or habitats to the maximum extent practicable. Lessees are required to conduct geophysical surveys prior to geotechnical surveys to identify potential munitions of concern, unexploded ordinances, and archaeological resources. Information about sensitive biological resources gained through these surveys will become part of the best available information lessees must use when conducting bottom disturbing activities. Additional information on this topic can be found in Section VI: Potential Future Restrictions below.

d. *Baseline Monitoring*: In the PSN, BOEM proposed and requested comments on a potential lease stipulation that would require lessees to conduct baseline data collection activities for endangered and threatened

marine mammals and their habitats in support of developing their COPs. BOEM received many comments in support and has decided to include a new stipulation requiring lessees to collect a minimum of three years of passive acoustic monitoring data for large whales in the Gulf of Maine North Atlantic Right Whale Critical Habitat to support the submission of the COP. The stipulation also includes requirements concerning data collection, transparency, and sharing. While this pre-COP requirement does not extend beyond large whales, BOEM refers lessees to additional baseline monitoring requirements, as outlined in BOEM's "Information Guidelines for a Renewable Energy Construction and Operations Plan (COP)" and "Final Information Needed for Issuance of a Notice of Intent (NOI) Under the National Environmental Policy Act (NEPA) for a Construction and Operations Plan (COP)." ⁵

e. *Hosted Engagement Opportunities*: BOEM recognizes the importance of engagement with Tribes, stakeholders, and oceans users at all stages of the process and acknowledges comments received in response to the PSN that advocate for additional engagement opportunities. BOEM may initiate and host meetings after the lease sale to facilitate early and continuous engagement between Tribes, lessees, stakeholders, ocean users, and Federal partners. Therefore, BOEM has introduced a lease stipulation, Addendum C, 3.1.2, that requires lessees to engage in meeting planning and participate in the meetings in a meaningful manner. These provisions, combined with the enhanced engagement and progress reporting framework, are designed to encourage development of Gulf of Maine leases in a manner that reflects the community they are within.

VI. Potential Future Restrictions

a. *Stellwagen Bank National Marine Sanctuary*: Several of the Gulf of Maine lease areas are adjacent to the Stellwagen Bank National Marine Sanctuary. BOEM recognizes that future development within the lease areas may necessitate installation of energy transmission cables within the sanctuary boundaries in identified cable corridors. Under the authority of the National Marine Sanctuaries Act, NOAA may consider authorizing installation of energy transmission cables within

³ See: ABS (American Bureau of Shipping). 2012. Floating Wind Turbines. Final Report: BSEE TAP 669 (Contract M11PC00004).

⁴ See: <https://www.ncei.noaa.gov/maps/deep-sea-corals/mapSites.htm>.

⁵ <https://www.boem.gov/cop-guidelines>; <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/BOEM%20NOI%20Checklist.pdf>.

sanctuary boundaries through one or more of the following mechanisms—General Permits, Authorizations, Certifications, and Special Use Permits.

b. Potential Future Restrictions to Mitigate Potential Conflicts with Department of Defense (DoD) Activities:

Potential bidders should be aware of potential conflicts with DoD's existing uses of the OCS. BOEM has coordinated with DoD throughout the leasing process. This included consultation with the Military Aviation and Installation Assurance Siting Clearinghouse, which conducted a DoD assessment of the Gulf of Maine Draft WEA. The assessment identified potential impacts, which are described below.

- *Air Surveillance and Radar:* The North American Aerospace Defense Command (NORAD) mission may be affected by development of the lease areas. Similar impacts have been encountered with other lease areas along the Atlantic Coast and have been largely if not entirely mitigated. Considering both the expected height of offshore turbines and future cumulative wind turbine effects, adverse impacts can be mitigated through the use of Radar Adverse-impact Management (RAM)⁶ and overlapping radar coverage. For projects where RAM mitigation is acceptable, BOEM anticipates including the following project approval conditions:

- Lessee will notify NORAD when the project is within 30–60 days of completion of commissioning of the last wind turbine generator (WTG) (meaning every WTG in the Project is installed with potential for blade rotation), and again when the project is complete and operational, for RAM scheduling;
- Lessee will contribute funds to DoD in the amount of no less than \$80,000 toward the cost of DoD's execution of the RAM procedures for each radar system affected; and
- Lessee will curtail wind turbine operations for national security or defense purposes as described in the lease.

- *Department of Navy operations:* While the Navy did not identify any conflicts with the Final WEA, mitigations to resolve potential conflicts with ship testing may be necessary depending on the specific projects proposed within the lease areas.

BOEM may require the lessee to enter into an agreement with DoD to implement any necessary conditions

and mitigate any identified impacts. BOEM will further coordinate with DoD and the lessee to eliminate potential conflicts throughout the project review stage, which may result in adding mitigation measures or terms and conditions as part of any plan approval.

c. Potential Future Restrictions to Mitigate Conflicts with Sand Resources: Potential bidders are advised that BOEM has identified sand resource areas in aliquots offshore the Gulf of Maine (Marine Minerals Information System (MMIS) Application <https://mmis.doi.gov/BOEMMMIS>). OCS sand resource areas are composed of sand deposits found on or below the surface of the OCS seabed. There are also potential sand resources in other areas in the Gulf of Maine not currently identified in MMIS datasets (e.g., Sand Resources and Atlantic OCS Aliquots with Sand Resources). If it is determined that accessible and significant OCS sand resources may be impacted by a proposed activity, BOEM may require lessees to undertake measures deemed economically, environmentally, and technically feasible to protect the resources to the maximum extent practicable, including minimizing, avoiding, and mitigating impacts to these resources. Measures may include modification of proposed transmission corridor locations if warranted. Neither BOEM nor the Bureau of Safety and Environmental Enforcement will approve future requests for in-place decommissioning of submarine cables in sand resource areas unless BOEM has determined that the submarine cables do not unduly interfere with other uses of the OCS, specifically sand resource use.

d. Potential Future Restrictions to Mitigate Possible Conflicts with Deep-Sea Corals and Biologically Sensitive Benthic Habitat: Potential bidders are advised that in the Gulf of Maine final WEA, NOAA has identified the presence of deep-sea corals and sponges, as well as hardbottom habitat areas suitable for sensitive deep-sea coral and sponge species. In addition, data collected during a spring 2024 research expedition within lease areas 0567 and 0568 indicates that there are additional areas that may contain sensitive or vulnerable hard-bottom features suitable for coral and sponge habitat.⁷

BOEM has included a new lease stipulation for the leases within this FSN to require lessees to avoid or minimize bottom disturbing activities

that may affect sensitive biological resources or habitats during any site assessment and site characterization activities to the maximum extent practicable. Furthermore, any site assessment and site characterization activities authorized by a lease would be subject to the protections for live-bottom features included in BOEM's programmatic consultation with the NMFS under ESA Section 7 (Addendum C, 5.2 in the leases). BOEM will conduct additional environmental review upon receipt of a lessee's COP and, as a condition of approval, may require avoidance measures to reduce potential impacts to sensitive benthic species and habitat within the lease area.

e. Existing Submarine Cable Infrastructure within Lease Areas: Potential bidders are advised that several lease areas overlap with existing submarine cable infrastructure. Lease areas 0564 and 0565 overlay the Amitié system and lease areas 0565 and 0566 overlay the EXA Atlantic system. The locations of these cables are available on the Northeast Ocean Data Portal. Lessees will be required to engage with submarine cable operators early in the project development process with the goal of deconflicting project plans before COPs are developed (see Addendum C, 3.1 of the leases).

f. Potential Impacts to Coastal Communities and National Park Service Properties: Potential bidders are advised that the National Park Service (NPS) has indicated that there are units and programs of the NPS System that would likely be affected by activities and development of the lease areas (e.g., air, visual, and nighttime resources). Future lessees will be required to engage with NPS, as required by the lease's Progress Report requirements and Agency Communication Plan, to ensure early and active information sharing, focused discussion of potential issues, and collaborative identification of solutions and mitigations. BOEM will also continue to work closely with NPS through regular interagency consultation and through collaborative work on future NEPA and National Historic Preservation Act analysis. Future lessees will also be required to engage with coastal communities on similar potential impacts.

VII. Lease Terms and Conditions

Along with this FSN, BOEM has made available the commercial lease forms that will be used to issue the leases from this sale. BOEM reserves the right to require compliance with additional terms and conditions associated with the approval of a site assessment plan (SAP) and COP. The leases may be

⁶ RAM is the technical process designed to minimize the adverse impact of obstruction interference on a radar system.

⁷ See: <https://coastalscience.noaa.gov/news/research-expedition-explores-gulf-of-maine-near-proposed-offshore-wind-energy-lease-areas/>.

found on BOEM's website at: <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. Each lease includes the following attachments:

- a. Addendum A ("Description of Leased Area and Lease Activities");
 - b. Addendum B ("Lease Term and Financial Schedule");
 - c. Addendum C ("Lease-Specific Terms, Conditions, and Stipulations"); and
 - d. Addendum D ("Project Easement").
- Addenda A, B, and C provide detailed descriptions of lease terms, conditions, and stipulations. Addendum D will be completed at the time of COP approval or approval with modifications.

VIII. Lease Financial Terms and Conditions

This section provides an overview of the required annual payments and financial assurances under the lease. Potential bidders should review the lease for more detailed information, including any changes from past practices.

a. *Rent*: Pursuant to 30 CFR 585.225(f) and 585.503, the first year's rent payment of \$3 per acre is due within 45 days after the winning bidder receives a copy of the executed lease from BOEM. Lease area acreage is delineated in Addendum A of the lease and, if applicable, includes portions of a lease that do not allow surface occupancy. Thereafter, annual rent payments are due on each anniversary of the effective date of the lease (the "lease anniversary") until your lease begins commercial operations. For example, for the 97,854 acres of Lease OCS-A 0562,

the rent payment would be \$293,562 per year until commercial operations begin. Once commercial operations begin, BOEM will charge rent only for the portions of the lease area remaining undeveloped (*i.e.*, non-generating acreage), as described in the lease.

If the lessee submits an application for relinquishment of a portion of its leased area within the first 45 days after receiving the executed lease from BOEM and BOEM approves that application, no rent payment would be due on the relinquished portion of the lease area. Later relinquishments of any portion of the lease area would reduce the lessee's rent payments starting in the year following BOEM's approval of the relinquishment.

A lease issued under 30 CFR part 585 confers on the lessee the right to one or more project easements, without further competition, for the purpose of installing gathering, transmission, and distribution cables, pipelines, and appurtenances on the OCS as necessary for the full enjoyment of the lease. A lessee must apply for the project easement as part of the COP or SAP, as provided under Subpart F of 30 CFR part 585.

The lessee also must pay rent for any project easement associated with the lease. Rent commences on the date that BOEM approves the COP that describes the project easement (or any modification of such COP that affects the easement acreage), as outlined in 30 CFR 585.507. Annual rent for a project easement \$5 per acre per year, subject to a minimum of \$450 per year. If the COP revision results in increased

easement acreage, additional rent would be due at the time the COP revision is approved.

b. *Operating Fee*: For purposes of calculating the initial annual operating fee under 30 CFR 585.506, BOEM applies an operating fee rate to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first 12 months of operations. This initial payment will be prorated to reflect the period between the commencement of commercial operations and the lease anniversary. The initial annual operating fee must be paid within 90 days of the commencement of commercial operations. Thereafter, subsequent annual operating fees must be paid on or before the lease anniversary.

The subsequent annual operating fees will be calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production. For the purposes of this calculation, the imputed market value will be the product of the project's annual nameplate capacity, the total number of hours in a year (8,760), the capacity factor, and the annual average price of electricity derived from a regional wholesale power price index. For example, the annual operating fee for a 976-megawatt (MW) wind facility operating at a 40 percent capacity (*i.e.*, capacity factor of 0.4) with a regional wholesale power price of \$40 per megawatt hour (MWh) and an operating fee rate of 0.02 would be calculated as follows:

$$\text{Annual Operating Fee} = 976 \text{ MW} \times 8,760 \frac{\text{hrs}}{\text{year}} \times 0.4 \times$$

$$\frac{\$40}{\text{MWh}} \text{ Power Price} \times 0.02 = \$2,735,923.20$$

i. *Operating Fee Rate*: The operating fee rate is the share of the imputed wholesale market value of the projected annual electric power production due to the ONRR as an annual operating fee. For the lease areas, BOEM proposes to set the fee rate at 0.02 (2 percent) for the entire life of commercial operations.

ii. *Nameplate Capacity*: Nameplate capacity is the maximum rated electric output, expressed in MW, which the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer.

iii. *Capacity Factor*: The capacity factor relates to the amount of energy

delivered to the grid during a period of time compared to the amount of energy the wind facility would have produced at full capacity during that same period of time. BOEM will set the capacity factor at 0.4 (*i.e.*, 40 percent) for the year in which the commercial operations begin and for the first 6 years of commercial operations on the lease. At the end of the sixth year, BOEM may adjust the capacity factor to reflect the performance over the previous 5 years based upon the actual metered electricity generation at the delivery point to the electrical grid. BOEM may make similar adjustments to the

capacity factor once every 5 years thereafter.

iv. *Wholesale Power Price Index*: Under 30 CFR 585.506(c)(2)(i), the wholesale power price, expressed in dollars per MWh, is determined at the time each annual operating fee payment is due. For the leases offered in this sale, BOEM will use the ISO New England .H.INTERNAL_HUB. A similar price dataset may also be used and may be posted by BOEM at <https://www.boem.gov> for reference.

c. *Financial Assurance*: Within 10-business days after receipt of the unsigned copy of the lease, the provisional winner must file financial

assurance in accordance with 30 CFR 585.225(b)(2). The provisional winner must provide an initial lease-specific bond or other BOEM-approved financial assurance instrument in the amount of 12 months' rent. The provisional winner may meet financial assurance requirements by posting a surety bond or other financial assurance instrument or alternative as provided in 30 CFR 585.526 through 585.529. BOEM encourages the provisional winners to discuss financial assurance requirements with BOEM as soon as possible after the auction has concluded.

BOEM will base the amount of financial assurance (for all SAP, COP, and decommissioning activities) on cost estimates for meeting all accrued lease obligations at the respective stages of development. The required amount of supplemental and decommissioning financial assurance will be determined on a case-by-case basis.

The payment terms described above can be found in Addendum B of the lease, which is available at: <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>.

IX. Bidder's Financial Form

Each bidder must submit to BOEM the information listed in the BFF referenced in this FSN. A copy of the form is available at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. In its BFF, each bidder must designate the email address that it will use to create an account in <https://www.pay.gov> account. BOEM must receive BFFs, including Conceptual Strategies, no later than September 27, 2024. If a bidder does not submit a BFF for this sale by the deadline, BOEM, in its sole discretion, may grant an extension to that bidder only if BOEM determines the bidder's failure to timely submit a BFF was caused by events beyond the bidder's control. The BFF is required to be executed by an authorized representative listed in the bidder's qualification package on file with BOEM. BFFs submitted by bidders for previous lease sales will not satisfy the requirements of this auction.

For this sale (ATLW-11), BOEM will accept bidders' BFFs and Conceptual Strategies electronically or by mail. Instructions for submission can be found in the BFF. The BFF must be executed on paper with a wet signature or with the application of a digital signature by an authorized representative listed on the legal qualification card currently on file with BOEM as authorized to bind the company. Winning bidders who have

committed to bidding credit(s) must meet the bidding credit requirements no later than submission of their first Facility Design Report (FDR) or the tenth lease anniversary, whichever is sooner.

X. Bid Deposit

A bid deposit is an advance cash payment submitted to BOEM to participate in the auction. ONRR will notify the bidders that they have access to the Bid Deposit Form in *pay.gov*, and bidders must use the Bid Deposit Form on the <https://www.pay.gov> website to submit a deposit. Bidders may need to create an account in *pay.gov* to access the Bid Deposit Form and submit a deposit. Each bidder must submit a bid deposit of \$2,000,000 for eligibility to bid on one lease area, or \$4,000,000 for eligibility to bid on two lease areas, no later than October 11, 2024. Any bidder who fails to submit the bid deposit by this deadline may be disqualified from participating in the auction. BOEM will consider extensions to this deadline only if BOEM, in its sole discretion, determines that the failure to timely submit the bid deposit was caused by events beyond the bidder's control.

Following the auction, bid deposits will be applied against the winning bid and other obligations owed to BOEM. Once BOEM has announced the provisional winners, BOEM will coordinate with ONRR to refund bid deposits to the other bidders.

If BOEM offers a lease to a provisional winner and that bidder fails to timely return the signed lease, establish financial assurance, or pay the balance of its bid for the lease area, BOEM may require forfeiture of the bidder's \$2,000,000 bid deposit for the lease area. In such a circumstance, BOEM may determine which bid would have won in the absence of the bid previously determined to be the winning bid and may offer a lease to this next highest eligible bidder. This process may be repeated if needed.

XI. Minimum Bid

The minimum bid is the lowest dollar amount per acre that BOEM will accept as a winning bid and is the amount at which BOEM will start the bidding in the auction. BOEM proposes a minimum bid of \$50.00 per acre for this lease sale.

XII. Auction Procedures

a. *Multiple-Factor Bidding Auction:* BOEM will use a multiple factor auction format for this lease sale. Under 30 CFR 585.113, multiple factor auction means an auction that involves the use of bidding credits to incentivize goals or

actions that support public policy objectives or maximize public benefits through the competitive leasing auction process. For any multiple factor auction, the monetary value of the bidding credits, if any, is added to the value of the cash bids to determine the highest bidder. The bid made by a particular bidder in each round of this lease sale will represent the sum of the monetary factor (cash bid) and the value of any non-monetary factors in the form of bidding credits. Bidders will be limited to bidding for two lease areas at a time, including at most one lease area in the North Region. BOEM will start the auction using the minimum bid price for each lease area and will increase these prices incrementally until no more than one bidder remains bidding on each lease area in the auction.

In response to public comments, BOEM is not revising the bidding credit percentages from those proposed in the PSN. The total bidding credits remain at 25 percent.

BOEM will grant bidding credits to bidders that commit to one or both of the following, subject to BOEM's evaluation of the bidder's BFF and Conceptual Strategy:

i. Supporting workforce training programs for the floating offshore wind industry or supporting the development of a domestic supply chain for the floating offshore wind industry, or a combination of both; or

ii. Establishing and contributing to a Fisheries Compensatory Mitigation Fund or contributing to an existing fund to mitigate potential negative impacts to Tribal subsistence fishing, commercial fisheries, and for-hire recreational fisheries caused by offshore wind development in the Gulf of Maine.

These bidding credits are intended to:

i. Enhance, through training, the floating offshore wind workforce and/or enhance the establishment of a domestic supply chain for floating offshore wind manufacturing, assembly, or services, both of which will contribute to the expeditious and orderly development of offshore wind resources on the OCS;

ii. Support the expeditious and orderly development of OCS resources by mitigating potential direct impacts from proposed projects and encouraging the investment in infrastructure germane to the floating offshore wind industry; and

iii. Minimize potential economic effects on Tribal subsistence fishing, commercial fisheries, and for-hire recreational fisheries impacted by potential floating offshore wind development, as coordination with commercial fisheries, for-hire recreational fisheries, and Tribes whose

subsistence fishing is impacted by wind energy operations in the OCS area of the Gulf of Maine will enable development of the lease area to advance.

b. *Changes to Auction Rules:* BOEM will be employing the BOEM Auction System for sales held in 2024. The auction format remains an ascending clock auction with multiple-factor bidding. However, there are five main changes to the ascending clock auction rules in the BOEM Auction System, as follows:

i. If a bidder decides to bid on a different lease area in a given round of the auction, it may submit a bid to reduce demand for the lease area it bid on in the previous round and, simultaneously, submit a bid to increase demand for another lease area. This

allows a bidder the option to switch to another lease area if the price of the first lease area exceeds the specified bid price.

ii. Provisional winners will no longer be determined using a two-step process. The auction rules are implemented in a way such that, when the auction concludes, the bidder who remains on a lease area after the final round becomes its provisional winner. There will be no additional processing step.

iii. The auctions will use a 'second price' rule. A given lease area will be won by the bidder that submitted the highest bid amount for the lease area, but the winning bidder will pay the highest bid amount at which there was competition (*i.e.*, the 'second price').

iv. Each bidder's bidding credit will be expressed directly as a percentage of the final price for the lease.

v. Any bid for multiple lease areas will be treated as independent bids for those lease areas, rather than as a package bid.

All five of these changes are applicable to the ATLW-11 sale. All potential bidders should review the complete Auction Procedures for Offshore Wind Lease Sales (Version 1) located at: <https://www.boem.gov/renewable-energy/lease-and-grant-information>.

c. *The Auction:* Using an online bidding system to host the auction, BOEM will start the bidding for the lease areas as described below.

TABLE 4—GULF OF MAINE PROPOSED LEASE AREAS AND MINIMUM BIDS

Lease area ID	Region	Acres	Minimum bid
OCS-A 0562	North	97,854	\$4,892,700
OCS-A 0563	North	105,682	5,284,100
OCS-A 0564	South	98,565	4,928,250
OCS-A 0565	South	103,191	5,159,550
OCS-A 0566	South	96,075	4,803,750
OCS-A 0567	South	117,780	5,889,000
OCS-A 0568	South	124,897	6,244,850
OCS-A 0569	South	106,038	5,301,900

BOEM will allow each qualified entity to bid for and ultimately win a maximum of two leases each, including a maximum of one lease area in the North Region as shown in Table 4. As such, a bidder can bid for and win a maximum of two South Region leases, or one North Region lease and one South Region lease—but cannot bid for or win both North Region leases.

The auction will be conducted in a series of rounds. Before each round, the auction system will announce the prices for each lease area offered in the auction. In Round 1, there is a single price for each lease area equal to the minimum bid price (also known as the 'opening price' or 'clock price of Round 1'). Each bidder can bid, at the opening prices, for as many lease areas as the bidder is eligible, as determined by the bidder's bid deposit, and subject to a maximum of one lease area in the North Region. After Round 1, the bidder's "processed demand" is one for each lease area for which the bidder bid in Round 1.⁸ The bidder's eligibility for Round 2 equals the number of lease

areas for which the bidder bid in Round 1.

Starting in Round 2, each lease area is assigned a range of prices for the round. The start-of-round price is the lowest price in the range, and the clock price is the highest price in the range. A bidder still eligible to bid after the previous round can either (i) continue bidding at the new round's clock price(s) for the lease area(s) for which the bidder's processed demand is one, or (ii) submit a bid(s) to reduce demand for one (or both) of these lease area(s) at any price(s) in the range(s) for that round. A bid to reduce demand at some price indicates that the bidder is not willing to acquire that lease area at a price exceeding the specified bid price. A bidder that bids to reduce demand for one or two lease areas could bid to increase demand for up to the same number of other lease areas in the same round.

If an eligible bidder does not place a bid during the round for a lease area for which the bidder's processed demand is one, the auction system will consider this a request to reduce demand for that lease area at the round's start-of-round price. The bidder can nonetheless win that lease area if it is the last remaining bidder for that lease area.

After each round, the auction system processes the bids and determines each

bidder's processed demand for each lease area and the posted prices for the lease areas. The bidder's eligibility for the next round will equal the number of lease areas for which the bidder had processed demand of one. If, after any round, a bidder's processed demand is zero for every lease area, the bidder's eligibility drops to zero and the bidder can no longer participate in the auction. The posted price is the price determined for each lease area after processing of all bids for a round. If only one bidder remains on a lease area, the posted price reflects the "second price" (*i.e.*, the highest price at which there was competition for the lease area).⁹

If, after the bids for the round have been processed, there is no lease area with excess demand (*i.e.*, no lease areas have more than one bidder), the auction will end. When this occurs, each bidder with processed demand of one for a lease area will become the provisional winner for that lease area. Otherwise,

⁹ The Auction Procedures for Offshore Wind Lease Sales provides details on how bids are prioritized and processed. Note that, in the ATLW-11 sale, the processing of any bid to increase demand will be subject to the constraints that: (1) the number of lease areas for which the bidder's processed demand is one does not exceed the bidder's eligibility for the round; and (2) the number of lease areas in the North Region for which the bidder's processed demand is one does not exceed one.

⁸ Bidders specify their demand for a lease area with either a 0 or 1 in the auction system. A demand of 1 indicates that the bidder is bidding for the lease area. Processed demand is the demand, either 0 or 1, of a bidder for a lease area following the processing of the bids for the round.

the auction will continue with a new round in which the start-of-round price for each lease area equals the posted price of the previous round.

The increment by which the clock price exceeds the start-of-round price will be determined based on several factors including, but not necessarily limited to, the expected time needed to conduct the auction and the number of rounds that have already occurred. BOEM reserves the right to increase or decrease the increment as it deems appropriate.

The provisional winner of each lease area will pay the final posted price (less any applicable bidding credit) or risk forfeiting its bid deposit. A provisional winner will be disqualified if it is subsequently found to have violated auction rules or BOEM regulations, or otherwise engaged in conduct detrimental to the integrity of the competitive auction. If a bidder submits a bid that BOEM determines to be a provisionally winning bid, the bidder must sign the applicable lease documents, post financial assurance, and submit the outstanding balance (if any) of its winning bid (*i.e.*, winning bid amount minus the applicable bid deposit and any applicable bidding credits) within 10 business days of receipt of the unsigned lease copy from BOEM, pursuant to 30 CFR 585.225(b). BOEM reserves the right to not issue the lease to the provisionally winning bidder if that bidder fails to: timely execute the lease and return it to BOEM, timely post adequate financial assurance, timely pay the balance of its winning bid, or otherwise comply with applicable regulations or the terms of the FSN. In any of these cases, the bidder will forfeit its bid deposit and BOEM reserves the right to offer a lease to the next highest eligible bidder as determined by BOEM.

BOEM will publish the names of the provisional winners of the lease areas and the associated prices shortly after the conclusion of the sale. Full bid results, including round-by-round results of the entire sale, will be published on BOEM's website after a review of the results and announcement of the provisional winners.

Additional information regarding the auction format:

i. *Authorized Individuals and Bidder Authentication:* An entity that is eligible to participate in the auction will identify on its BFF up to three individuals who will be authorized to bid on behalf of the company, including their names, business telephone numbers, and email addresses. All individuals will log into the auction system using *Login.gov*. Prior to the

auction, each individual listed on the BFF form must register an account on *Login.gov* using the same email address that was listed in the BFF and associate a phishing-resistant multi-factor authentication method with its *Login.gov* account. A Fast Identity Online (FIDO)-compliant security key¹⁰ is recommended as a phishing-resistant MFA method. The *login.gov* registration, together with the phishing-resistant MFA method will enable the individual to log into the auction system. Information on the login and authentication procedures for 2024 offshore wind lease sales is available online at: <https://www.boem.gov/renewable-energy/lease-and-grant-information>.

After BOEM has processed the bid deposits, the auction contractor will send an email to the authorized individuals, inviting them to practice logging into the auction system on a specific day in advance of the mock auction. The *Login.gov* login process, along with the authentication for the auction helpdesk, will also be tested during the mock auction.

If an eligible bidder fails to submit a bid deposit or does not participate in the first round of the auction, BOEM will deactivate that bidder's login information.

ii. *Timing of Auction:* The auction will begin at 9:00 a.m. EDT on October 29, 2024. Bidders will be able to log into the auction system beginning 30 minutes before the start of the auction. BOEM recommends that bidders log in earlier than 9:00 a.m. EDT on that day to ensure that any login issues are resolved prior to the start of the auction.

iii. *Messaging Service:* BOEM and the auction contractors will use the auction system's messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM could change the schedule at any time, including during the auction. If BOEM changes the schedule during the auction, it will use the messaging service to notify bidders that a revision has been made and will direct bidders to the relevant page. BOEM will also use the messaging service for other updates during the auction.

¹⁰ FIDO keys are produced by many manufacturers, such as Yubico and Google. They are widely available and can easily be purchased from Amazon, Best Buy, Walmart, or any other seller of electronics. The latest generation of the FIDO standard is FIDO2, and each authorized individual should obtain a key compliant with the FIDO2 authentication standard. FIDO keys are typically inserted into a computer's USB port, so the authorized individual should obtain a FIDO key compatible with their computer (USB-A or USB-C) or a USB adapter, as necessary.

iv. *Bidding Rounds:* Bidders are allowed to place bids or to change their bids at any time during the bidding round. At the top of the bidding page, a countdown clock shows how much time remains in each round. Bidders will have until the end of the round to place bids. Bidders should do so according to the procedures described in the FSN and the Auction Procedures for Offshore Wind Lease Sales. Information about the round results will be made available only after the round has closed, so there is no strategic advantage to placing bids early or late in the round.

The Auction Procedures for Offshore Wind Lease Sales elaborates on the auction process described in this FSN. In the event of any inconsistency among the Auction Procedures for Offshore Wind Lease Sales, the Bidder Manual, and the FSN, the FSN is controlling.¹¹

v. *Alternate Bidding Procedures:* Redundancy is the most effective way to mitigate technical and human issues during an auction. BOEM strongly recommends that bidders consider authorizing more than one individual to bid in the auction and confirming during the Mock Auction that each authorized individual is able to access the auction system. A mobile hotspot or other form of wireless access is helpful in case a company's main internet connection should fail. As a last resort, an authorized individual facing technical issues may request to submit its bid by telephone. To be authorized to place a telephone bid, an authorized individual must contact the help desk, at the phone number provided to bidders, before the end of the round. BOEM will authenticate the caller's identity. The caller must explain the reasons why a telephone bid needs to be submitted. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using this alternate telephonic bidding procedure. The auction help desk requires codes from the Google Authenticator mobile application as part of its procedure for identifying individuals who call for assistance. *Prior to the auction*, all individuals listed on the BFF should download the Google Authenticator mobile application¹² onto their smartphone or tablet.¹³ The first time the individual

¹¹ Installing the Google Authenticator app is required only if the app has not already been installed on the smartphone or tablet.

¹² The Google Authenticator app must be installed from either the Apple App Store or the Google Play Store.

¹³ Installing the Google Authenticator app is required only if the app has not already been installed on the smartphone or tablet.

logs into the auction system, the system will provide a QR token to be read into the Google Authenticator application. This token is unique to the individual and BOEM auctions. It enables the Google Authenticator application to generate time-sensitive codes that must be provided to the help desk representative as part of the user authentication process.

d. *12.5 Percent Bidding Credit for Workforce Training or Supply Chain Development or a Combination of Both:* This bidding credit allows a bidder to receive a credit of 12.5 percent in exchange for a commitment to make a qualifying monetary contribution ("Contribution"), in the same amount as the bidding credit received, to programs or initiatives that support workforce training programs for the U.S. floating offshore wind industry or development of a U.S. domestic supply chain for the floating offshore wind industry, or both, as described in the BFF Addendum and the lease. To qualify for this credit, the bidder must commit to the bidding credit requirements on the BFF and submit a Conceptual Strategy as described in the BFF Addendum.

i. The Contribution to workforce training must result in a better trained and/or larger domestic floating offshore wind workforce that will provide for more efficient operations via increasing the supply of fully trained personnel. Training of existing lessee employees, lessee contractors, or employees of affiliated entities will not qualify as an appropriate contribution toward fulfilling this bidding credit commitment.

ii. The Contribution to domestic supply chain development must result in overall benefits to the U.S. floating offshore wind supply chain available to all potential purchasers of floating offshore wind services, components, or subassemblies, not solely the lessee's project; and either: (i) the demonstrable development of new domestic capacity (including vessels) or the demonstrable buildout of existing capacity; or (ii) an improved floating offshore wind domestic supply chain by reducing the upfront capital or certification cost for manufacturing floating offshore wind components, including the building of facilities, the purchasing of capital equipment, and the certifying of existing manufacturing facilities.

iii. Contributions cannot be used to satisfy private cost shares for any federal tax or other incentive programs where cost sharing is a requirement. No portion of the Contribution may be used to meet the requirements of any other bidding credits for which the lessee qualifies.

iv. Bidders interested in obtaining a bidding credit could choose to contribute to workforce training programs, domestic supply chain initiatives, or a combination of both. The Conceptual Strategy must describe verifiable actions that the lessee will take that will allow BOEM to confirm compliance once the lessee has submitted documentation that shows it has satisfied the bidding credit commitment. The Contribution must be tendered in full, and the lessee must provide documentation evidencing it has made the Contribution and complied with applicable requirements, no later than the date the lessee submits its first FDR.

v. Contributions to workforce training must promote and support one or more of the following purposes: (i) Union apprenticeships, labor management training partnerships, stipends for workforce training, or other technical training programs or institutions focused on providing skills necessary for the planning, design, construction, operation, maintenance, or decommissioning of floating offshore wind energy projects in the United States; (ii) Maritime training necessary for the crewing of vessels to be used for the construction, servicing, and/or decommissioning of floating wind energy projects in the United States; (iii) Training workers in skills or techniques necessary to manufacture or assemble floating offshore wind components, subcomponents, or subassemblies (examples of areas involving these skills and techniques include welding; wind energy technology; hydraulic maintenance; braking systems; mechanical systems, including blade inspection and maintenance; or computers and programmable logic control systems); (iv) Tribal floating offshore wind workforce development programs or training for Tribal citizens or employees of an Indian Economic Enterprise¹⁴ in skills necessary to participate in the floating offshore wind industry; or (v) Training in any other job skills that the lessee can demonstrate are necessary for the assessment, planning, design, construction, operation, maintenance, environmental monitoring, or decommissioning of floating offshore wind energy projects in the United States OCS.

vi. Contributions to domestic supply chain development must promote and support one or more of the following: (i) development of a domestic supply chain

for the floating offshore wind industry, including manufacturing of components and sub-assemblies and the expansion of related services; (ii) domestic Tier 2¹⁵ and Tier 3¹⁶ floating offshore wind component suppliers and domestic Tier-1¹⁷ supply chain efforts, including quay-side fabrication; (iii) technical assistance grants to help U.S. manufacturers re-tool or certify (e.g., ISO-9001) for floating offshore wind manufacturing; (iv) development of Jones Act-compliant vessels for the construction, servicing, and/or decommissioning of floating wind energy projects in the United States, including semi-submersible barges for use during quayside manufacturing, assembly, or installation; (v); purchase and installation of self-propelled modular transporter systems (SPMTs), lift cranes capable of installing foundations, towers, and nacelles quayside, and domestic mooring manufacturing facilities; (vi) port infrastructure related to floating offshore wind component manufacturing and preparation of quayside manufacturing and assembly areas for the construction and deployment of floating foundations, or other components of floating offshore wind turbines; (vii) establishing a new or existing bonding support reserve or revolving fund available to all businesses providing goods and services to floating offshore wind energy companies, including disadvantaged businesses¹⁸ and/or Indian Economic Enterprises; or (viii) other supply chain development efforts that the lessee can demonstrate further the manufacturing of floating offshore wind components or subassemblies or the provision of floating offshore wind services in the United States.

¹⁵ Tier 2: Subassemblies are the systems that have a specific function for a Tier 1 component. They may include subassemblies of a number of smaller parts, such as a pitch system for blades. Tier 2 manufacturers contract with Tier 1 suppliers as a subcontractor or vendor.

¹⁶ Tier 3: Subcomponents are commonly available items that are combined into Tier 2 subassemblies, such as motors, bolts, and gears. Tier 3 manufacturers are typically vendors that provide components to Tier 2 suppliers.

¹⁷ Tier 1 components examples include the primary offshore wind components such as the blades, nacelles, towers, foundations, and cables. Tier 1 components are the major products that are purchased by an offshore wind project developer, such as the wind turbine, foundation, or cables. Tier 1 suppliers are primary suppliers that contract directly with the project developer. Contributions for Tier 1 supply chain development can include infrastructure necessary for quayside manufacturing, fabrication, or assembly.

¹⁸ A disadvantaged business entity would be one at least 51% owned and controlled by a socially and economically disadvantaged individual or individuals as defined by the Small Business Administration.

¹⁴ [https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18\(Reload\).pdf](https://www.bia.gov/sites/default/files/dup/assets/as-ia/ieed/Primer%20on%20Buy%20Indian%20Act%20508%20Compliant%202.6.18(Reload).pdf).

vii. *Documentation*: If a lease is issued pursuant to a winning bid that includes a bidding credit for workforce training or supply chain development, the lessee must provide documentation showing that the lessee has met the financial commitment before the lessee submits the first FDR for the lease. The documentation must allow BOEM to objectively verify the amount of the Contribution and the beneficiary(ies) of the Contribution.

At a minimum, the documentation must include: all written agreements between the lessee and beneficiary(ies) of the Contribution, which must detail the amount of the Contribution(s) and how it will be used by the beneficiaries of the Contribution(s) to satisfy the goals of the bidding credit for which the Contribution was made; all receipts documenting the amount, date, financial institution, and the account and owner of the account to which the Contribution was made; and sworn statements by the entity that made the Contribution and the beneficiary(ies) of the Contribution attesting that all information provided in the above documentation is true and accurate. The documentation would need to describe how the funded initiative or program has advanced, or is expected to advance, U.S. floating offshore wind workforce training or supply chain development. The documentation must also provide qualitative and/or quantitative information that includes the estimated number of trainees or jobs supported, or the estimated leveraged supply chain investment resulting or expected to result from the Contribution. The documentation must contain any information called for in the Conceptual Strategy that the lessee submitted with its BFF and to allow BOEM to objectively verify (i) the amount of the Contribution and the beneficiary(ies) of the Contribution, and (ii) compliance with the bidding credit criteria provided in Addendum C of the lease. If the lessee's implementation of its Conceptual Strategy changes due to market needs or other factors, the lessee must explain the changed approach. BOEM reserves all rights to determine that bidding credit criteria have not been satisfied if changes from the lessee's Conceptual Strategy result in the lessee not meeting the criteria for the bidding credit described in Addendum C of the lease.

viii. *Enforcement*: The commitment for the bidding credit will be made in the BFF and would be included in a lease addendum that will bind the lessee and all future assignees of the lease. If BOEM were to determine that a lessee or assignee had failed to satisfy

the requirements of the bidding credit, or if a lessee were to relinquish or otherwise fail to develop the lease by the tenth anniversary date of lease issuance, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the lease Effective Date. The interest rate would be the underpayment interest rate identified by ONRR. The lessee would not be required to pay said amount if the lessee satisfied its bidding credit requirements but failed to develop the lease by the tenth anniversary. BOEM could, at its sole discretion, extend the documentation deadline beyond the first FDR submission or extend the lease development deadline beyond the 10-year timeframe.

e. *12.5 percent Bidding Credit for Fisheries Compensatory Mitigation Fund*: The second bidding credit allows a bidder to receive a credit of 12.5 percent of its bid in exchange for a commitment to establish and contribute to a Fisheries Compensatory Mitigation Fund, or to contribute to a similar existing fund, to compensate for potential negative impacts to Tribal subsistence fishing, commercial fisheries, and for-hire recreational fisheries in the Gulf of Maine resulting from project development under the Lease. The term "Tribal subsistence fishing" for the purpose of this bidding credit refers to a fishery where the fish caught are shared and consumed directly by the families, kin, and fellow Tribal members of the fishers rather than being sold. The term "commercial fisheries" refers to commercial and processing businesses engaged in the act of catching and marketing fish and shellfish for sale from the Gulf of Maine. The term "for-hire recreational fisheries" refers to charter and headboat fishing operations involving vessels-for-hire engaged in recreational fishing in the Gulf of Maine that are hired for a charter fee by an individual or group of individuals for the exclusive use of that individual or group of individuals. Lessees are encouraged to coordinate with other lessees to establish or contribute to a regional fund. The regional fund should ensure lease-specific claims are accounted for. At a minimum, the compensation must address the following:

- Tribal subsistence loss;
- Gear loss or damage; and
- Lost fishing income in Gulf of Maine wind energy lease areas.

The Fisheries Compensatory Mitigation Fund will assist Tribal subsistence fishing, commercial fisheries, and for-hire recreational fisheries directly impacted by Tribal

subsistence, income, or gear losses due to offshore wind activities on offshore wind leases or easements and is intended to address the impacts identified in BOEM's environmental and project reviews. The compensatory mitigation must cover impacts to Tribal subsistence fishing, commercial fisheries, and for-hire recreational fisheries that result directly from the preconstruction, construction, operations, and decommissioning of an offshore wind project being developed in the Gulf of Maine wind energy leases or easements. The fund must be established and the Contribution made before the lessee submits the lease's first FDR or before the fifth lease anniversary, whichever is sooner. To qualify for this credit, the bidder must commit to the bidding credit requirements on the BFF and submit a Conceptual Strategy as described in the BFF Addendum.

Bidders applying for the Fisheries Compensatory Mitigation Fund bidding credit must submit their Conceptual Strategy along with their BFF, further described below and in the BFF Addendum. The Conceptual Strategy would certify the actions that the lessee intends to take would allow BOEM to verify compliance when the lessee seeks to demonstrate satisfaction of the requirements for the bidding credit. The lessee will be required to provide documentation showing that the lessee has met the commitment and complied with the applicable bidding credit requirements before the lessee submits the lease's first FDR or before the fifth lease anniversary, whichever is sooner.

The fund must compensate Tribal subsistence fishers, commercial fishers, and for-hire recreational fishers for gear loss or damage, as well as any income loss claims, and Tribal subsistence loss incurred as a result of any stage of offshore wind project development (preconstruction, construction, operations, and decommissioning) resulting from this lease. Loss claims may also result from impacts from the development of easements associated with this lease and/or the conduct of surveys on this lease before the establishment of the fund. Funds that have been determined to be in excess of those needed to compensate for gear loss or damage, income loss for commercial fisheries and for-hire recreational fishing, and Tribal subsistence fishing loss as a result of lease development, based on actuarial accounting, may be used to:

- support regional fisheries compensatory mitigation efforts for other Gulf of Maine and Atlantic OCS offshore wind projects,

- offset the cost of gear and navigational aid upgrades and other transitions for operating within a wind farm; or
- promote participation of fishers and fishing communities in the project development process or other programs that better enable the fishing and offshore wind industries to co-exist.

Any fund established or selected by the lessee to meet this bidding credit requirement must include a process for evaluating the actuarial status of funds at least every 5 years and publicly reporting information on fund disbursement and administrative costs at least annually.

The Fisheries Compensatory Mitigation Fund must be independently managed by a third party and must include trustees or board members from fishing stakeholder groups. The Fund must include fiduciary governance and strong internal controls, and must minimize administrative expenses. The Contribution may be used for fund startup costs, but the fund should minimize costs by leveraging existing processes, procedures, and information from BOEM's Draft Guidelines for Mitigating Impacts to Commercial and Recreational Fisheries on the Outer Continental Shelf, the Eleven Atlantic States' Fisheries Mitigation Project, or other sources.

i. *Documentation*: If a lease is awarded pursuant to a winning bid that includes a Fisheries Compensatory Mitigation Fund Bidding Credit, the lessee must provide written documentation to BOEM that demonstrates that it completed the full Contribution before it submits the lease's first FDR or before the fifth lease anniversary, whichever is sooner. The documentation must enable BOEM to objectively verify the Contribution has met all applicable requirements as outlined in Addendum C of the lease.

ii. At a minimum, this documentation must include:

(1) the procedures established to compensate for gear loss or damage resulting from all phases of the project development on the Lease (pre-construction, construction, operation, and decommissioning);

(2) the procedures established to compensate for income loss to commercial fisheries and for-hire recreational fisheries resulting from all phases of the project development on the Lease (pre-construction, construction, operation, and decommissioning);

(3) the procedures established to compensate for Tribal subsistence fishing loss resulting from all phases of the project development on the Lease

(pre-construction, construction, operation, and decommissioning);

(4) the Fisheries Compensatory Mitigation Fund charter, including the governance structure, audit and public reporting procedures, and standards for paying compensatory mitigation for impacts to fishers from all phases of offshore wind development;

(5) all receipts documenting the amount, date, financial institution, and the account and owner of the account to which the Contribution was made; and

(6) sworn statements by the entity that made the Contribution, attesting to:

- i. the amount and date(s) of the Contribution;
- ii. that the Contribution is being (or will be) used in accordance with the bidding credit requirements in the lease; and
- iii. that all information provided is true and accurate.

The documentation must contain any information specified in the Conceptual Strategy that was submitted with the BFF. If the lessee's implementation of its Conceptual Strategy changes due to market needs or other factors, the lessee must explain this change. BOEM reserves the right to determine that the bidding credit has not been satisfied if changes from the lessee's Conceptual Strategy result in the lessee not meeting the criteria for the bidding credit described in Addendum C of the lease.

iii. *Enforcement*: The commitment to the Fisheries Compensatory Mitigation Fund Bidding Credit will be made in the BFF. It will be included in Addendum C of the lease and will bind the lessee and all future assignees of the lease. If BOEM were to determine that a lessee or assignee had failed to satisfy the commitment at the time the first FDR is submitted, or by the fifth lease anniversary, whichever is sooner, the amount corresponding to the bidding credit awarded will be immediately due and payable to ONRR with interest from the lease effective date. The interest rate would be the underpayment interest rate identified by ONRR. The lessee would not be required to pay said amount if the lessee satisfied its bidding credit requirements by the time the first FDR is submitted, or the fifth lease anniversary, whichever is sooner. BOEM may, at its sole discretion, extend the documentation deadline beyond the first FDR or beyond the fifth lease anniversary.

XIII. Rejection or Non-Acceptance of Bids

BOEM reserves the right and authority to reject any and all bids that do not satisfy the requirements and rules of the

auction, the FSN, or applicable regulations and statutes.

XIV. Anti-Competitive Review

Bidding behavior in this sale is subject to Federal antitrust laws. Following the auction, but before the acceptance of bids and the issuance of the lease, BOEM must "allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of [the] lease sale." 43 U.S.C. 1337(c)(1). If a provisional winner is found to have engaged in anti-competitive behavior in connection with this lease sale, BOEM may reject its provisionally winning bid. Compliance with BOEM's auction procedures and regulations is not an absolute defense against violations of antitrust laws.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

1. an express or tacit agreement among bidders not to bid in an auction, or to bid a particular price;
2. an agreement among bidders not to bid against each other; or
3. other agreements among bidders that have the potential to affect the final auction price.

Pursuant to 43 U.S.C. 1337(c)(3), BOEM may decline to award a lease if the Attorney General, in consultation with the Federal Trade Commission, determines that awarding the lease may be inconsistent with antitrust laws.

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see <https://www.justice.gov/atr> and consult legal counsel.

XV. Process for Issuing the Lease

Once all post-auction reviews have been completed to BOEM's satisfaction, BOEM will provide an unsigned copy of the lease to the provisional winner in accordance with 30 CFR 585.225. Within 10 business days after receipt of the unsigned copy, the provisional winner must:

1. execute the lease and return it to BOEM;
2. file financial assurance as required under 30 CFR 585.516 through 585.529, as applicable; and
3. pay by electronic funds transfer (EFT) the balance owed (the winning cash bid less the applicable bid deposit), if any. BOEM requires bidders to use EFT procedures (not <https://www.pay.gov>, the website bidders used to submit bid deposits) for payment of the balance, following the detailed

instructions contained in the “Instructions for Making Electronic Payments” available on BOEM’s website at <https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/EFT-Payment-Instructions.pdf>.

BOEM will not execute the lease until all three requirements above have been satisfied, the provisional winner has established financial assurance pursuant to 30 CFR 585.516 and 585.225, and BOEM has processed the provisional winner’s payment. BOEM, at its discretion, may extend the 10-business-day deadline for executing a lease, filing the required financial assurance, and paying the balance owed, pursuant to 30 CFR 585.225(d).

If the provisional winner does not meet these requirements or otherwise fails to comply with applicable regulations or the terms of the FSN, BOEM reserves the right to not issue the lease to that bidder. In such a case, the provisional winner will forfeit its bid deposit. Also, in such a case, BOEM reserves the right to offer the lease to the next highest eligible bidder as determined by BOEM.

Within 45 calendar days after receiving a copy of the executed lease from BOEM, the provisional winner must pay the first 12 months’ rent using the “ONRR Renewable Energy Initial Rental Payments” form available at: <https://www.pay.gov/public/form/start/27797604>. Subsequent annual rent payments must be made following the detailed instructions available on ONRR’s website at: <https://onrr.gov/paying/payment-options?tabs=rent-payments>.

XVI. Non-Procurement Debarment and Suspension Regulations

Pursuant to 43 CFR part 42, subpart C, an OCS renewable energy lessee must comply with the Department of the Interior’s non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400. The lessee must also communicate this requirement to persons with whom the lessee does business relating to this lease by including this requirement as a term or condition in their contracts and other transactions.

XVIII. Changes to Auction Details

BOEM has the discretion to change any auction detail specified in this FSN, including the date and time, if events outside BOEM’s control have been found to interfere with a fair and proper lease sale. Such events may include, but are not limited to, natural disasters (e.g., earthquakes, hurricanes, floods, and blizzards), wars, riots, act of terrorism, fire, strikes, civil disorder, Federal

Government shutdowns, cyberattacks against relevant information systems, or other events of a similar nature. In case of such events, BOEM will notify all qualified bidders via email, phone, and BOEM’s website at <https://www.boem.gov/renewable-energy/state-activities/maine/gulf-maine>. Bidders should call BOEM’s Auction Manager at (703) 787-1121 if they have concerns.

XIX. Withdrawal of Blocks

As provided in BOEM’s regulations at 30 CFR 585.224(e), BOEM may withdraw all or part of a lease area from the lease sale between auction closure and lease execution. In the event that a portion of the lease area is withdrawn, the provisional winner has the option to refuse the lease without penalty, to propose new lease terms for BOEM’s concurrence, or to accept the lease with the reduced area.

XX. Appeals

Procedures for reconsideration of rejected bids are provided in BOEM’s regulations at 30 CFR 585.224 and 585.118(c). BOEM’s decision on a bid is the final action of the Department of the Interior, and is not subject to appeals to the Office of Hearings and Appeals, but an unsuccessful bidder may appeal that decision to the BOEM Director as provided by 30 CFR 585.118(c).

XXI. Protection of Privileged and Confidential Information

BOEM will protect privileged or confidential information that the lessee submits, as authorized by the Freedom of Information Act (FOIA), BOEM’s regulations at 30 CFR 585.114, or other applicable statutes. If the lessee wishes to protect the confidentiality of information, the lessee should clearly mark it “Contains Privileged or Confidential Information” and consider submitting such information as a separate attachment. BOEM will not disclose such information, except as required by the FOIA. If your submission is requested under the FOIA, your information will only be withheld if a determination is made that one of the FOIA’s exemptions to disclosure applies. Such a determination will be made in accordance with the Department’s FOIA regulations and applicable law. Labeling information as privileged or confidential will alert BOEM to more closely scrutinize whether it warrants withholding. Further, BOEM will not treat as confidential aggregate summaries of otherwise nonconfidential information.

Authority: 43 U.S.C. 1337(p); 30 CFR 585.210 and 585.214.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2024-21081 Filed 9-16-24; 8:45 am]

BILLING CODE 4340-98-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1349]

Components for Certain Environmentally-Protected LCD Digital Displays and Products Containing the Same; Notice of a Commission Determination To Grant a Joint Motion To Terminate the Investigation on the Basis of Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to grant a joint motion to terminate this investigation based on settlement.

FOR FURTHER INFORMATION CONTACT: Joelle P. Justus, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2593. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On January 10, 2023, the Commission instituted this investigation based on a complaint filed by Samsung Electronics Co., Ltd. of the Republic of Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Samsung Research America, Inc. of Mountain View, California; and Samsung International, Inc. of Chula Vista, California (collectively, “Samsung”). 88 FR 1404-05 (Jan. 10, 2023). The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation,

or the sale within the United States after importation of components for certain environmentally-protected LCD digital displays and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,948,575 (“the ‘575 patent”); 8,111,348 (“the ‘348 patent”); RE45,117 (“the ‘117 patent”); 8,842,253 (“the ‘253 patent”); and 8,223,311 (“the ‘311 patent”). *Id.* The Commission’s notice of investigation named Manufacturing Resources International, Inc. (“MRI”) of Alpharetta, Georgia as the sole respondent. The Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On October 10, 2023, the Commission determined not to review an initial determination terminating the investigation as to all asserted claims of the ‘575 patent; all asserted claims of the ‘348 patent; claim 5 of the ‘117 patent; claims 1, 10, 11, and 16–19 of the ‘253 patent; and claims 1–3 and 7–12 of the ‘311 patent. Order No. 22, *unreviewed by Comm’n Notice* (Oct. 10, 2023).

On April 16, 2024, the presiding administrative law judge issued a final initial determination (“final ID”) on violation of section 337 and a recommended determination on remedy and bond. The final ID held that no violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of components of certain environmentally-protected LCD digital displays and products containing the same by reason of infringement of claims 1 and 2 of the ‘117 patent, claims 4, 6, and 13 of the ‘311 patent, and claim 12 of the ‘253 patent.

On June 17, 2024, the Commission determined to review the final ID in part. *See* 89 FR 52505 (June 24, 2024). The Commission asked the parties to address a number of questions related to the issues under review. *Id.* at 52506–07.

On July 1, 2024, Samsung and MRI each filed an initial written response to the Commission’s request for briefing. On July 9, 2024, the parties each filed a reply submission.

On August 13, 2024, the parties filed a Joint Motion to Stay Investigation and Extend Target Date. The parties stated they have agreed to resolve the investigation based on the terms of the Binding Term Sheet (Ex. A), but requested that the Commission stay the investigation and extend the target date to August 30, 2024, to allow the parties time to execute a final settlement agreement and file a motion to terminate the investigation. The Commission granted the motion, stayed the investigation, and extended the target date for completion of the investigation to September 16, 2024. Comm’n Notice (Aug. 16, 2024).

On August 28, 2024, the parties filed a Joint Motion for Termination by Settlement (“Motion”). The parties submitted the executed settlement agreement as Exhibit A to the Motion.

The Commission has determined that the Motion complies with the requirements of Rule 210.21(b)(1) of the Commission’s Rules of Practice and Procedure (19 CFR 210.21(b)(1)), and that there are no extraordinary circumstances that would prevent the requested termination. The Commission also finds that granting the Motion would not be contrary to the public interest pursuant to Rule 210.50(b)(2) of the Commission’s Rules of Practice and Procedure (19 CFR 210.50(b)(2)). Accordingly, the Commission hereby grants the Motion. The Commission takes no position as to the issues that remain under review.

This investigation is terminated.

The Commission vote for this determination took place on September 12, 2024.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 12, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–21114 Filed 9–16–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1431]

Bulk Manufacturer of Controlled Substances Application: Chemtos, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Chemtos, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 18, 2024. Such persons may also file a written request for a hearing on the application on or before November 18, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on August 5, 2024, Chemtos, LLC, 16713 Picadilly Court, Round Rock, Texas 78664–8544, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Amineptine	1219	I
Mesocarb	1227	I
3-Fluoro-N-methylcathinone (3-FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4-FMC)	1238	I
Pentedrone (α -methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I

Controlled substance	Drug code	Schedule
4-Methyl-N-ethylcathinone (4-MEC)	1249	I
Naphyrone	1258	I
3-MMC; 3-METHYLMETHCATHINONE	1259	I
N-Ethylamphetamine	1475	I
Methiopropamine	1478	I
N,N-Dimethylamphetamine	1480	I
Fenethylamine	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
ETIZOLAM	2780	I
FLUALPRAZOLAM	2785	I
CLONAZOLAM	2786	I
FLUBROMAZOLAM	2788	I
DICLAZEPAM	2789	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR-144 and XLR11 [1-(5-Fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
FUB-144 (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7014	I
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB-FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
FUB-AMB, MMB-FUBINACA, AMB-FUBINACA (2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7021	I
AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I
THJ-2201 [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone	7024	I
5F-AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboximide)	7025	I
ADB-BUTINACA	7027	I
AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
MAB-CHMINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F-AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F-ADB; 5F-MDMB-PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
5F-EDMB-PINACA (ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7036	I
5F-MDMB-PICA (methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7041	I
MDMB-CHMICA, MMB-CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7042	I
MMB-CHMICA, AMB-CHMICA (methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate)	7044	I
FUB-AKB48, FUB-APINACA, AKB48 N-(4-FLUOROBENZYL) (N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboximide)	7047	I
APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide	7048	I
5F-APINACA, 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7049	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
5F-CUMYL-PINACA, 5GT-25 (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide)	7083	I
5F-CUMYL-P7AICA (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide)	7085	I
4-CN-CUML-BUTINACA, 4-cyano-CUMYL-BUTINACA, 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA, SGT-78 (1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide)	7089	I
4F-MDMB-BUTICA; 4F-MDMB-BICA	7091	I
ADB-4EN-PINACA	7092	I
CUMYL-PEGACLONE; SGT-151	7093	I
5F-EDMB-PICA; 5F-EDMB-2201	7094	I
MMB-FUBICA	7095	I
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole)	7104	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate	7221	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
4-MEAP (4-Methyl-alpha-ethylaminopentiophenone)	7245	I
N-Ethylhexedrone	7246	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol)	7297	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2,5-Dimethoxy-4-(n-propylthiophenethylamine (2C-T-7)	7348	I
Marihuana Extract	7350	I

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Parahehyl	7374	I
Mescaline	7381	I
2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C-T-2)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
4'-Chloro-alpha-pyrrolidinovalerophenone	7443	I
MPHP, 4'-Methyl-alpha-pyrrolidinohexiophenone	7446	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	7473	I
N-Ethyl-3-piperidyl benzilate	7482	I
N-Methyl-3-piperidyl benzilate	7484	I
N-Benzylpiperazine	7493	I
4-Methyl-alpha-pyrrolidinopropiophenone (4-MePPP)	7498	I
2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D)	7508	I
2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E)	7509	I
2-(2,5-Dimethoxyphenyl) ethanamine (2C-H)	7517	I
2-(4-iodo-2,5-dimethoxyphenyl) ethanamine (2C-I)	7518	I
2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C)	7519	I
2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)	7521	I
2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P)	7524	I
2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C-T-4)	7532	I
MDPV (3,4-Methylenedioxypropiovalerone)	7535	I
2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B-NBOMe)	7536	I
2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe)	7537	I
2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
N-Ethypentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one)	7543	I
α-PHP, alpha-Pyrrolidinohexanophenone	7544	I
alpha-pyrrolidinopentiophenone (α-PVP)	7545	I
alpha-pyrrolidinobutiophenone (α-PBP)	7546	I
Ethylone	7547	I
Eutylone	7549	I
A-PIHP; ALPHA-PIHP	7551	I
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I
Acetyldihydrocodeine	9051	I
Benzylmorphine	9052	I
Codeine-N-oxide	9053	I
Cyprenorphine	9054	I
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Brorphine	9098	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Heroin	9200	I
Hydromorphenol	9301	I
Methyldesorphine	9302	I
Methyldihydromorphine	9304	I

Controlled substance	Drug code	Schedule
Morphine methylbromide	9305	I
Morphine methylsulfonate	9306	I
Morphine-N-oxide	9307	I
Myrophine	9308	I
Nicocodeine	9309	I
Nicomorphine	9312	I
Normorphine	9313	I
Pholcodine	9314	I
Thebacon	9315	I
Acetorphine	9319	I
Drotebanol	9335	I
U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I
AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide)	9551	I
MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine)	9560	I
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Benzethidine	9606	I
Betacetylmethadol	9607	I
Betameprodine	9608	I
Betamethadol	9609	I
Betaprodine	9611	I
Clonitazene	9612	I
Dextromoramide	9613	I
Isotonitazene	9614	I
Diampromide	9615	I
Diethylthiambutene	9616	I
Dimenoxadol	9617	I
Dimepheptanol	9618	I
Dimethylthiambutene	9619	I
Dioxaphetyl butyrate	9621	I
Dipipanone	9622	I
Ethylmethylthiambutene	9623	I
Etonitazene	9624	I
Etixeridine	9625	I
Furethidine	9626	I
Hydroxypethidine	9627	I
Ketobemidone	9628	I
Levomoramide	9629	I
Levophenacymorphan	9631	I
Morpheridine	9632	I
Noracymethadol	9633	I
Norlevorphanol	9634	I
Normethadone	9635	I
Norpipanone	9636	I
Phenadoxone	9637	I
Phenampromide	9638	I
Phenoperidine	9641	I
Piritramide	9642	I
Proheptazine	9643	I
Properidine	9644	I
Racemoramide	9645	I
Trimeperidine	9646	I
Phenomorphane	9647	I
Propiram	9649	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	9663	I
Tilidine	9750	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide	9816	I
Para-Methylfentanyl	9817	I
4'-Methyl Acetyl Fentanyl	9819	I
Ortho-Methyl Methoxyacetyl Fentanyl	9820	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
Para-fluorobutyryl fentanyl	9823	I
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9824	I

Controlled substance	Drug code	Schedule
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide	9825	I
Para-chloroisobutyl fentanyl	9826	I
Isobutyl fentanyl	9827	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
Para-methoxybutyl fentanyl	9837	I
Ocfentanil	9838	I
Thiofuranyl Fentanyl	9839	I
Valeryl fentanyl	9840	I
Phenyl fentanyl	9841	I
Beta'-Phenyl fentanyl	9842	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide	9843	I
Crotonyl Fentanyl	9844	I
Cyclopropyl Fentanyl	9845	I
Ortho-Fluorobutyl Fentanyl	9846	I
Cyclopentyl Fentanyl	9847	I
Ortho-Methyl Acetyl fentanyl	9848	I
Fentanyl related compounds as defined in 21 CFR 1308.11(h)	9850	I
Fentanyl Carbamate	9851	I
Ortho-Fluoracryl Fentanyl	9852	I
Ortho-Fluoroisobutyl Fentanyl	9853	I
Para-Fluoro Furanyl Fentanyl	9854	I
2'-Fluoro ortho-fluorofentanyl	9855	I
Beta-Methyl Fentanyl	9856	I
Zipeprol	9873	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Norfentanyl	8366	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Anileridine	9020	II
Cocaine	9041	II
Codeine	9050	II
Etorphine HCl	9059	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Hydrocodone	9193	II
Levomethorphan	9210	II
Levorphanol	9220	II
Isomethadone	9226	II
Meperidine	9230	II
Meperidine intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Metazocine	9240	II
Oliceridine	9245	II
Methadone	9250	II
Methadone intermediate	9254	II
Metopon	9260	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Oripavine	9330	II

Controlled substance	Drug code	Schedule
Thebaine	9333	II
Dihydroetorphine	9334	II
Levo-alphaacetylmethadol	9648	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Phenazocine	9715	II
Thiafentanil	9729	II
Piminodine	9730	II
Racemethorphan	9732	II
Racemorphan	9733	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Bezitramide	9800	II
Fentanyl	9801	II
Moramide-intermediate	9802	II

The company plans to bulk manufacture the listed controlled substances for distribution to its customers. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–21062 Filed 9–16–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1432]

Bulk Manufacturer of Controlled Substances Application: Eli-Elsohly Laboratories

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Eli-Elsohly Laboratories has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 18, 2024. Such persons may also file a written request for a hearing on the application on or before November 18, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically

through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on August 16, 2024, Eli-Elsohly Laboratories, 5 Industrial Park Drive, Oxford, Mississippi 38655–5343, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols ...	7370	I
Dihydromorphine	9145	I
Amphetamine	1100	II
Methamphetamine	1105	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Ecgonine	9180	II
Thebaine	9333	II

The company plans to manufacture the listed controlled substances for product development reference standards. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to isolate these controlled

substances from procured 7350 (Marihuana Extract). In reference to drug code 7360, no cultivation activities are authorized for this registration.

In reference to drug code 9333 (Thebaine), the company plans to manufacture a Thebaine derivative. No other activities for these drug codes are authorized for this registration.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–21060 Filed 9–16–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–53]

George D. Gowder, III, M.D.; Decision and Order

On July 18, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to George Gowder, III, M.D., of Blairsville, Georgia (Respondent). OSC, at 1, 3. The OSC proposed the denial of Respondent's application for a DEA Certificate of Registration (registration), Control No. W22147308C, alleging that Respondent has been convicted of a felony relating to Federal controlled substance laws, and that he has been excluded from participation in Medicare, Medicaid, and all Federal health care programs. *Id.* at 1–2 (citing 21 U.S.C. 823(g)(1), 824(a)(2), 824(a)(5)).

A hearing was held before DEA Administrative Law Judge Teresa A. Wallbaum (ALJ), who, on December 1, 2023, issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Recommended Decision or RD). The RD recommended that

Respondent's application be granted with restrictions.¹ RD, at 20–21. The Government filed Exceptions to the RD. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, credibility findings,² findings of fact, and conclusions of law, and expands upon portions thereof herein. However, the Agency has determined based on Respondent's unequivocal acceptance of responsibility and his fulsome demonstration of remediation that Respondent can be trusted with an unencumbered registration for Schedules III through V.

I. Findings of Fact

A. Felony Conviction

On June 10, 2020, Respondent pled guilty to one count of "Dispensing Controlled Substances Outside Professional Practice" in violation of 21 U.S.C. 841(a) and 841(b)(1)(C), and he was sentenced to 18 months in prison. RX 2, at 1; RD, at 8; Tr. 8. After serving 15 months in prison, he was placed on two years of supervised release. RD, at 8; Tr. 89–91. Respondent served one year of supervised release, but was released from the second. RD, at 8; Tr. 91–92.

Respondent's Federal conviction was the culmination of more than a decade of diverting controlled substances for personal use.³ RD, at 5–6. Respondent testified that he began taking opioids in the early 2000s after they were lawfully prescribed for a back injury. *Id.* at 6; Tr. 55. Respondent testified that, after

finishing that prescription, he would occasionally "reward" himself by taking an opiate sample from the emergency room where he worked. RD, at 6; Tr. 55–56, 59. He would take an opiate once a month, which then progressed to once every two weeks. RD, at 6; Tr. 58–59. Respondent testified that his progression "from a user to an addict" took at least two or three years. RD, at 6; Tr. 59–60. Respondent abused oxycodone and hydrocodone in pill form. *Id.* Respondent testified that when he became addicted to opiates, he "started doing things [he] would never ha[ve] thought [he] would do," including forging prescriptions and stealing drugs from patients. RD, at 6; Tr. 60. Respondent explained that he forged prescriptions in two different ways. RD, at 7–8; Tr. 85. First, he wrote prescriptions for himself and forged another physician's name and DEA number. *Id.* Second, he wrote prescriptions purportedly for a homebound patient, went to the pharmacy to have the prescriptions filled, and used the drugs himself. RD, at 8; Tr. 85–86.

Respondent's misconduct led to a series of arrests by local law enforcement in 2015 and 2016, which resulted in charges for prescription forgery. RD, at 6–7; Tr. 62–68. After the first arrest in April of 2015, Respondent entered a residential treatment center for three months, and has remained drug-free since. *See supra* III.B; RD, at 8; Tr. 93. While in recovery, local law enforcement referred his case to Federal law enforcement and Federal charges were brought. RD, at 7; Tr. 69–70. Respondent ultimately pled guilty and was federally convicted in June of 2020. RD, at 7; Tr. 64, 70, 79.

B. Exclusion From Medicare

The Department of Health and Human Services (HHS) notified Respondent by letter on October 29, 2021, that he would be "exclud[ed] from participation in all Federal health care programs . . . for a minimum period of [seven] years." GX 3, at 1. The letter notified Respondent that the exclusion was a result of Respondent's "felony conviction . . . related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance." *Id.* The letter also notified Respondent that his period of exclusion exceeded the minimum exclusion period of five years because his criminal sentence included prison time, and because the Georgia Composite Medical Board (Medical Board) had taken additional adverse action against Respondent by suspending his medical

license.⁴ *Id.* HHS considered these factors to be "aggravating circumstances." *Id.* The seven-year exclusion period became effective on November 18, 2021. *Id.*

II. Discussion

The Government alleged two independent grounds for denial: (1) that Respondent has been convicted of a felony relating to controlled substances, 21 U.S.C. 824(a)(2), 823(g)(1), and (2) that Respondent has been excluded from participation in all Federal health care programs, *id.* sections 824(a)(5), 823(g)(1). OSC, at 1–2. Having reviewed the record and the RD, the Agency agrees with the ALJ, adopts the ALJ's analysis, and finds that the Government has satisfied its *prima facie* burden of demonstrating that both grounds for denial exist. *Id.* at 10–12.

A. Felony Conviction

Pursuant to 21 U.S.C. 824(a)(2), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA) "upon a finding that the registrant . . . has been convicted of a felony . . . relating to any . . . controlled substance." 21 U.S.C. 824(a)(2). The Agency has consistently held that it also may deny an application for a DEA registration upon finding that the registrant has been convicted of a felony relating to controlled substances. *Arvinder Singh, M.D.*, 81 FR 8247, 8248 n.3 (2016) (quoting *Kwan Bo Jin, M.D.*, 77 FR 35021, 35021 n.2 (2012)) ("[W]here a registration can be revoked under [21 U.S.C.] 824, it can, *a fortiori*, be denied under [21 U.S.C.] 823 since the law would not require an agency to indulge in the useless act of granting a license on one day only to withdraw it on the next."). Here, the undisputed and substantial record evidence demonstrates that Respondent has been convicted of a felony relating to controlled substances. OSC, at 10–11. RD, at 11; GX 2; RX 1, at 3–4; Tr. 87–88.

B. Exclusion From Medicare

Respondent's application also may be denied "upon a finding that the registrant . . . has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42." 21 U.S.C. 824(a)(5), 823(g)(1); *Arvinder Singh*, 81 FR 8248 n.3. Here, the undisputed and substantial record evidence demonstrates that HHS

¹ The ALJ recommended that Respondent be required to submit to regular drug testing, refrain from taking controlled substances that are not lawfully prescribed, and hire a practice monitor to monitor his prescribing practices and submit regular reports to DEA. RD, at 20–21. The ALJ also recommended that Respondent's registration be limited to Schedules III through V. *Id.* As noted herein, Respondent only applied for authority in Schedules III through V.

² The Agency adopts the ALJ's summary of each of the witnesses' testimonies as well as the ALJ's assessment of each of the witnesses' credibility. *See* RD, at 3–10. The Agency agrees with the ALJ that the testimony from the DEA Diversion Investigator (DI), which was primarily focused on the introduction of the Government's documentary evidence, was "sufficiently detailed, plausible, and internally consistent to be afforded full credibility." *Id.* at 5.

³ The Agency agrees with the ALJ that "Respondent testified clearly, candidly, and without hesitation," notwithstanding that he "unarguably possesses . . . the greatest motivation to enhance, modify, or even fabricate his testimony." RD, at 9. Respondent "did not shy away from difficult questions and his answers contained no caveats or attempts to minimize his behavior," and in fact, the primary details regarding his fraudulent conduct came from Respondent's testimony and exhibits. *Id.* at 9–10. Therefore, the Agency agrees with the ALJ that Respondent's testimony should be "afforded full credibility." *Id.* at 10.

⁴ Respondent regained his state medical license in October of 2022. RD, at 6; Tr. 53.

mandatorily excluded Registrant from “all Federal health care programs” under 42 U.S.C. 1320a–7(a)(4). RD, at 11; GX 3; ALJX 14, at 2; Tr. 30–31.

III. Sanction

Where, as here, the Government has established sufficient grounds to deny a Respondent’s application, the burden shifts to the registrant to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18882, 18904 (2018). When a registrant has committed acts inconsistent with the public interest, he must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195*, 77 FR 62316, 62339 (2012). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency’s interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.*, 86 FR 33738, 33746 (2021).

A. Acceptance of Responsibility

Here, the Agency agrees with the ALJ that Respondent unequivocally accepted responsibility for his conduct. RD, at 12–14. Respondent took every opportunity to acknowledge that his conduct was wrong and he made no efforts to minimize it. *Id.* at 13. He admitted that he was guilty of dispensing controlled substances outside of his professional practice because he forged prescriptions and fraudulently filled his patients’ prescriptions for his own use. RD, at 13; Tr. 84–85. Respondent testified that he did not want to defend or glorify his conduct, and stated that “it is a shameful, morally bad place to be.” RD, at 13; Tr. 56, 84–86. He also acknowledged that he “abused the public trust as a physician.” RD, at 13; Tr. 83. Respondent testified that he has “been completely honest” about his behavior and conduct “with every single person that [he has] spoken to whether it’s law enforcement, whether in the legal system, [or] in treatment.” Tr. 89–90. Respondent testified that the judge presiding over his criminal sentencing hearing “spoke highly” of him, and noted his acceptance of responsibility and willingness to cooperate.⁵ RD, at 8; Tr. 80.

⁵ Respondent’s credible, unchallenged testimony regarding his acceptance of responsibility in his

Accordingly, the Agency agrees with the ALJ that Respondent unequivocally accepted responsibility for his misconduct,⁶ RD, at 12–14, and commends Respondent for his willingness to candidly reflect on his battle with addiction in a public forum.

B. Remedial Measures

Having found that Respondent has unequivocally accepted responsibility for his conduct, the Agency considers whether Respondent has implemented sufficient remedial measures to demonstrate that he will not engage in future misconduct and can be trusted with a registration. *Jayam Krishna-Iyer, M.D.*, 74 FR 459, 463 (2009). The Agency has acknowledged that “[i]n self-abuse cases, . . . successful rehabilitation efforts are an important consideration in determining whether a respondent can be trusted with a registration.” *Trenton F. Horst, D.O.*, 80 FR 41079, 41091 (2015); *see also Abbas E. Sina, M.D.*, 80 FR 53191, 53201 (2015) (“[T]he risk of relapse becomes critical in determining what steps are warranted when determining the public interest.”).

Respondent provided extensive testimony regarding his recovery and his efforts to remain sober. RD, at 15; Tr. 106–108, 109–110. After his first arrest in April of 2015, he entered a residential treatment center for three months. RD, at 8; Tr. 93. He went into treatment partially because he knew he would not be able to regain his medical license without receiving treatment. RD, at 8; Tr. 94–95. After completing residential treatment, Respondent entered a “Chemical Addiction Monitoring Agreement” with the Georgia Professional Health Program (PHP). RD, at 8–9; RX 2, at 1. The agreement required him to submit to random drug tests and attend self-help meetings, small-group counseling sessions, and meetings with other physicians in the PHP. RD, at 9; Tr. 96–97; RX 2, at 1–3. The initial agreement lasted for five years, and he completed it before entering Federal prison in July of 2020. RD, at 9; Tr. 107–09; RX 2, at 1. Respondent was not monitored by the PHP during his incarceration. RD, at 9; Tr. 108–109. Respondent entered a second agreement with the PHP in

criminal proceedings weighs in his favor. *See Michele L. Martinho, M.D.*, 86 FR 24012, 24020 n.*E (2021) (citing *Mohammed Asgar*, 83 FR 29569, 29573 n.3 (2018)) (An AUSA or Judge’s comments regarding a respondent’s acceptance of responsibility during criminal proceedings are not binding on the Agency, but they are relevant evidence).

⁶ The Government seems to acknowledge in its Post-hearing Brief that Respondent accepted responsibility for his conduct. ALJX 23, at 25.

September of 2022, which required him to continue to attend various meetings and submit to random drug tests. RD, at 9; Tr. 107–08; RX 2, at 9–17.

Respondent testified that he entered the new agreement because he wanted “to do whatever [the] Georgia PHP felt was needed for [him] to be a reliable physician,” but that he also had an “overwhelming desire not to fall back into addiction.” RD, at 15; Tr. 106. Because Respondent does “a good bit” more than is required by the Georgia PHP agreement, he was recently transitioned to a “senior monitoring agreement,” which still requires him to submit to random drug tests. RD, at 9, 15; Tr. 111–12.

Respondent testified that he plans to remain under the supervision of the Georgia PHP even if he is no longer required to do so to maintain his medical license. RD, at 15; Tr. 112. He also plans to continue taking random drug tests, because even though there is “no part of [him] that wants to take a drug[,] . . . the statistics [are] brutal on relapses,” so he “[cannot] imagine what would possess [him] to not continue to be accountable to a urine drug test.” RD, at 15–16; Tr. 112. Respondent testified that drug testing is one of the best tools to reduce the likelihood of remission. RD, at 16; Tr. 112. Respondent testified that he has taken hundreds of drug tests, and that there has only been one one-month period since April of 2015 that he has not been subject to random drug tests. Tr. 97. Respondent testified that he has never failed a drug test and that he has remained drug-free since entering treatment in April of 2015. *Id.*

Perhaps the most concrete remedial measure that Respondent has taken—which addresses both his addiction and the prescription forgery—is that he applied for a registration to dispense drugs only in Schedules III through V. *Id.* at 16; Tr. 37; 114–115; GX 4, at 1. Respondent testified that he does not want authority to prescribe Schedule II drugs because those are the drugs that he previously abused. RD, at 16; Tr. 85–86, 114–115.

Respondent believes that he can be trusted with a registration because of his understanding of addiction and his understanding of how doctors can abuse their power to write prescriptions. RD, at 16; Tr. 119. According to Respondent, with this knowledge, he is safer writing prescriptions than the majority of physicians. *Id.* Respondent requests authority to prescribe controlled substances in Schedules III through V so that he can work in an inpatient treatment facility that manages medical detoxification and treats patients with ongoing chronic illnesses, such as

diabetes or mental health issues. RD, at 6; Tr. 58, 124. Respondent currently volunteers as a physician at a long-term recovery center where he is not required to possess a DEA registration. RD, at 5; Tr. 57, 123.

Analysis of Respondent's remedial measures is particularly complex. On one hand, the weight of the remedial evidence is reduced because the measures were not implemented until after Respondent was arrested, and many of these measures are mandatory under an agreement with the Medical Board.⁷ RD, at 15; Tr. 107. On the other hand, Respondent has made a sincere commitment to remaining drug-free for himself and for his family, and has gone above and beyond the Medical Board's requirements to ensure he does so. RD, at 15; Tr. 111. For example, Respondent's application seeks only to handle drugs in Schedules III through V to ensure that he does not have access to the Schedule II drugs that he abused in the past. RD, at 16; Tr. 85–86, 114–115. With these extensive remedial measures Respondent has remained sober for approximately nine years. Accordingly, the ALJ found, and the Agency agrees, that Respondent can be trusted with a DEA registration. RD, at 16.

C. Deterrent Effect and Egregiousness

Acceptance of responsibility and remedial measures are assessed in the context of the “egregiousness of the violations and the [DEA’s] interest in deterring similar misconduct by [the] Respondent in the future as well as on the part of others.” *Daniel A. Glick, D.D.S.*, 80 FR 74800, 74810 (2015); *OakmontScript Limited Partnership*, 87 FR 21516, 21545 (2022). Because these administrative proceedings are intended to be remedial, rather than punitive, the Agency has previously found that, under appropriate circumstances, “criminal convictions and sanctions by state licensing authorities can sufficiently deter physicians from

engaging in misconduct, making the denial of an application . . . unnecessary to achieve the goal of general deterrence.” *Gilbert Y. Kim, D.D.S.*, 87 FR 21139, 21145 (2022) (citing *Kansky J. Delisma, M.D.*, 85 FR 23845, 23854 (2020)). The Agency has also held that, sometimes, “such punitive measures can suffice to deter the registrant or applicant from future misconduct, making revocation or denial of an application unnecessary to achieve specific deterrence.” *Id.*

Here, the Agency does not find that imposing a sanction is necessary to deter Respondent from engaging in future misconduct. Respondent has already faced significant legal consequences for his misconduct, including multiple arrests, jailtime, supervised release, and the loss of his state medical license and DEA registration. Respondent has also undergone significant monitoring to recover and maintain his state medical license, including taking hundreds of random drug tests and attending frequent substance abuse meetings. RD, at 9; Tr. 96–97; RX 2, at 1–3. Respondent testified that the consequences of his unlawful behavior have hurt him and his family. Tr. 131. Thus, the Agency finds that the punitive, remedial, and personal consequences that Respondent has suffered are sufficient to deter him from engaging in future misconduct, especially given Respondent's strong personal and professional commitment to remaining drug-free. Respondent's commitment to sobriety is a strong deterrent to future misconduct, as Respondent testified that the only reason that he engaged in the fraudulent conduct that led to the felony conviction and Medicare exclusion was to feed his personal addiction. RD, at 6; Tr. 60. Respondent's decision not to request authority to prescribe the Schedule II drugs that he previously abused is also a significant deterrent. RD, at 16; Tr. 85–86, 114–115. Moreover, there is no evidence that Respondent has committed any additional CSA violations since entering treatment in April of 2015, which bolsters the Agency's conclusion that Respondent has been sufficiently deterred from future violations.

The Agency also finds that the significant consequences that Respondent has faced are sufficient to deter the general registrant community from committing similar misconduct of forging prescriptions and diverting controlled substances for personal use. This Decision should signal to the registrant community that CSA violations are likely to result in serious

legal consequences—as Respondent confronted a protracted legal battle with local and Federal law enforcement, state regulators, and DEA as a result of his misconduct. But this Decision should also demonstrate to registrants recovering from addiction that, by accepting responsibility, remediating their actions, demonstrating sustained success with sobriety and conveying a strong commitment to remaining sober, cooperating with state and Federal enforcers, and demonstrating candor during enforcement proceedings, they may be shown leniency.

Regarding egregiousness, there is no dispute that the conduct that led to Respondent's conviction and subsequent exclusion from all Federal health care programs was egregious.⁸ RD, at 17. Respondent admitted to using extra samples at the hospital where he worked, forging prescriptions using other physicians' DEA registrations, and writing prescriptions with his own DEA registration purportedly for home-bound patients. *Id.* Indeed, such cases of fraud and forgery are particularly egregious because Respondent used his knowledge as a DEA registrant to circumvent the closed system of distribution, and he diverted powerful Schedule II controlled substances. *Id.* “These are actions that strike at the very heart of the responsibilities entrusted to a DEA registrant” *Id.* (citing *Jana Marjenhoff, D.O.*, 80 FR 29067, 29095 (2015)).

However, the evidence overwhelmingly suggests that Respondent has unequivocally accepted responsibility, is remorseful for his conduct, has taken efforts to help others recover from addiction, and rehabilitated himself even before he was convicted and required to serve his time. He has also taken steps to reduce the likelihood of recurrence by limiting his application to drugs in Schedules III through V that he has never abused. In other words, Respondent has presented convincing evidence to demonstrate that the Agency can trust him with a registration.⁹ Therefore, the Agency will grant his application.

⁸ The Government argues in its Exceptions that “the egregiousness of Respondent's conduct supports denial and outweighs any acceptance of responsibility or proposed remedial measures.” Government's Exceptions, at 4. The Agency agrees with the Government that Respondent's conduct was egregious, but finds that other factors discussed throughout this Decision obviate the need for a sanction in this case.

⁹ For all of the reasons set forth herein, the Agency finds that it can fully trust Respondent with a registration. The Agency therefore finds that the ALJ's recommended conditions on Respondent's registration are unnecessary. RD, at 20–21.

⁷ The Agency has held that remedial measures are given “limited-to-no-weight” when they are implemented after enforcement begins. *See, e.g., Morris & Dickson Co., LLC*, 88 FR 34523, 34539–40 (2023) (citing *Mireille Lalanne, M.D.*, 78 FR 47750, 47777 (2013)) (“The Agency has recognized that a cessation of illegal behavior only when ‘DEA comes knocking at one's door,’ can be afforded a diminished weight borne of its own opportunistic timing.”); *Southwood Pharmaceuticals, Inc.*, 72 FR 36487, 36503 (2007) (giving no weight to respondent's “stroke-of-midnight decision” to cease supplying suspect pharmacies with controlled substances and to employ a compliance officer). This principle applies in even greater force here, where the remedial measures that Respondent has implemented appear to be mandatory under an agreement with the state medical board, rather than voluntary.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823 and 824, I hereby dismiss the Order to Show Cause issued to George Gowder, III, M.D., and grant Respondent's application number W22147308C in Schedules III through V. This Order is effective immediately.

Signing Authority

This document of the Drug Enforcement Administration was signed on September 11, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024-21051 Filed 9-16-24; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Electrical Standards for Construction and General Industry

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 17, 2024.

ADDRESSES: Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202-693-0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The information collection requirements specified in the Electrical Standards for Construction and General Industry are necessary for the prevention of inadvertent electrocution of workers. These provisions require labels, markings, written programs, notifications, and tags to alert workers of the presence and the different types of electrical hazards found in the workplace, thereby, preventing serious injuries and deaths from electrocutions. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 1, 2024 (89 FR 54540).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs

receive a month-to-month extension while they undergo review.

Agency: DOL-OSHA.

Title of Collection: Electrical Standards for Construction and General Industry.

OMB Control Number: 1218-0130.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 970,289.

Total Estimated Number of Responses: 2,979,332.

Total Estimated Annual Time Burden: 210,693 hours.

Total Estimated Annual Other Costs Burden: \$15,835,311.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024-21020 Filed 9-16-24; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Slings Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety and Health Administration (OSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before October 17, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202-693-6312, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The provisions of the standard require that the employer make a periodic inspection of alloy steel chain slings at least once a year and to make and maintain a record of the inspection. It also requires the employer to ensure

However, the Agency's trust can be lost in the event of a relapse, so the Agency encourages Respondent to stick to his plan to continue taking random drug tests. As Respondent testified, "the statistics [are] brutal on relapses," and drug testing is one of the best tools to reduce the likelihood of remission. RD, at 15-16; Tr. 112.

that each new, repaired or reconditioned alloy steel chain sling is proof tested and a certification record maintained. In addition, the standard requires the employer to maintain a record of the proof test on wire rope slings. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 27, 2024 (89 FR 53655).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-OSHA.

Title of Collection: Slings Standard.

OMB Control Number: 1218-0223.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 465,923.

Total Estimated Number of Responses: 465,923.

Total Estimated Annual Time Burden: 38,339 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024-21019 Filed 9-16-24; 8:45 am]

BILLING CODE 4510-26-P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet virtually on September 23, 2024. The Finance Committee meeting will begin at 1:00 p.m. EDT and will continue until the conclusion of the Committee's agenda.

PLACE: *Public Notice of Virtual Meeting.*

STATUS: Closed to public observation.

MATTERS TO BE CONSIDERED: A verbatim written transcript will be made of the closed session of the Board meeting. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (c)(6) will not be available for public inspection. A copy of the General Counsel's certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED: Matters to be discussed include the proposed collective bargaining agreement between LSC Management and its employee union and a resolution authorizing a working capital line of credit.

CONTACT PERSON FOR MORE INFORMATION: Jessica Wechter, Special Assistant to the President, at (202) 295-1626. Questions may also be sent by electronic mail to wechterj@lsc.gov.

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at <https://www.lsc.gov/about-lsc/board-meeting-materials>.

(Authority: 5 U.S.C. 552b.)

Dated: September 12, 2024.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

[FR Doc. 2024-21161 Filed 9-13-24; 11:15 am]

BILLING CODE 7050-01-P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Thursday, September 19, 2024.

PLACE: Board Room, 7th Floor, Room 7B, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314-3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Board Briefing, Share Insurance Fund Quarterly Report.
2. NCUA Rules and Regulations, Simplification of Insurance Rules.
3. NCUA Rules and Regulations, Fair Hiring in Banking.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703-518-6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2024-21255 Filed 9-13-24; 4:15 pm]

BILLING CODE 7535-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2024-0107]

Information Collection: Visitor Access Request System (VARs)

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on this proposed information collection. The information collection is entitled, "Visitor Access Request System (VARs)."

DATES: Submit comments by November 18, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods, however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0107. Address questions about Docket IDs in [Regulations.gov](https://www.regulations.gov) to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the "For Further Information Contact" section of this document.

- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T-6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on obtaining information and submitting comments,

see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2024-0107 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0107. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC-2024-0107 on this website.
- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML24157A041. The supporting statement, titled VARS Supporting Statement, is available in ADAMS under Accession No. ML24157A036.

- *NRC’s PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *NRC’s Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC’s Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone:

301-415-2084; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2024-0107, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB’s approval for the information collection summarized below.

1. *The title of the information collection:* Visitor Access Request System (VARS).
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number, if applicable:* Not applicable.
5. *How often the collection is required or requested:* As needed.
6. *Who will be required or asked to respond:* All visitors.
7. *The estimated number of annual responses:* 750.
8. *The estimated number of annual respondents:* 750.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 25 hours annually.
10. *Abstract:* The VARS module in the Space and Property Management System is used to manage visitor access at NRC facilities. NRC employees can pre-register visitors or register them on-

site and assign parking if needed. Upon arrival, security officers verify the visitor’s identity, conduct security screening, and provide a visitor pass. NRC personnel (employees and contractors) must escort the visitors at all times.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.
2. Is the estimate of the burden of the information collection accurate? Please explain your answer.
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: September 12, 2024.

For the Nuclear Regulatory Commission
David Cullison,
NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024-21115 Filed 9-16-24; 8:45 am]

BILLING CODE 7590-01-P

PEACE CORPS

Privacy Act of 1974; System of Records

AGENCY: Peace Corps.

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circulars A-108 and A-130, the Peace Corps is issuing public notice of its intent to modify a System of Records that it maintains subject to the Privacy Act of 1974, PC-33, entitled “Security Incident Management System (SIMS)”. This System of Records Notice (SORN) is being modified to reflect the new name of the SORN (previously “Consolidated Incident Reporting System (CIRS)”), align with the new formatting requirements, published by the Office of Management and Budget, and to ensure appropriate Privacy Act coverage of business processes and Privacy Act information. Substantive changes have been made to the “System Location” “Categories of Individuals Covered by the System,” “Categories of Records in the System,” “System Locations,” “Routine Uses,” “Policies

and Practices for Retrieval of Records,” Policies and Practices for Retention and Disposal of Records,” and “Administrative, Technical and Physical Safeguards” sections to provide greater transparency. Changes to “Routine Uses” include new provisions related to responding to breaches of information held under a Privacy Act SORN as required by OMB’s Memorandum M–17–12, “Preparing for and Responding to a Breach of Personally Identifiable Information” (January 3, 2017).

DATES: This modified system of records is effective 30 days upon publication; however, comments on the Routine Uses will be accepted on or before October 16, 2024. The Routine Uses are effective at the close of the comment period.

ADDRESSES: Send written comments, identified by the docket number and title, to the Peace Corps, ATTN: James Olin, FOIA/Privacy Act Officer, 1275 First Street NE, Washington, DC 20526, or by email at pcfr@peacecorps.gov. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: James Olin, FOIA/Privacy Act Officer, 1275 First Street, NE, Washington, DC 20526; pcfr@peacecorps.gov; or 202–692–2507.

SUPPLEMENTARY INFORMATION: The Peace Corps is amending a system of records that it maintains subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Specifically, PC–33, entitled “Security Incident Management System (SIMS)” is being amended to reflect the new name of the system (previously “Consolidated Incident Reporting System (CIRS)”) and two new routine uses at paragraphs M and N:

“(M). Disclosure to all appropriate agencies, entities, and persons when (1) the Peace Corps suspects or has confirmed that there has been a breach of the system of records; (2) the Peace Corps has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Peace Corps (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Peace Corps’ efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.”

“(N). Disclosure to another Federal agency or Federal entity, when the Peace Corps determines that information from this system of records is reasonably necessary to assist the

recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.”

Additionally, substantive changes have been made to the “System Location” “Categories of Individuals Covered by The System,” “Categories of Records in the System,” “System Locations,” “Routine Uses,” “Policies and Practices for Retrieval of Records,” “Policies and Practices for Retention and Disposal of Records,” and “Administrative, Technical and Physical Safeguards” sections to provide greater transparency.

SYSTEM NAME AND NUMBER:

Security Incident Management System (SIMS), PC–33.

SECURITY CLASSIFICATION:

Not applicable.

SYSTEM LOCATION:

Office of Safety and Security, Peace Corps, 1275 First St., NE, Washington, DC 20002. Information may also be stored within Microsoft Dynamics 365 overseen by the Office of the Chief Information Officer.

SYSTEM MANAGER(S):

Social Science Analyst, Office Safety and Security, Peace Corps, 1275 First St. NE, Washington, DC 20002.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Peace Corps Act, 22 U.S.C. 2501 et seq.

PURPOSE(S) OF THE SYSTEM:

To provide a single central facility within the Peace Corps for tracking reported crimes against Volunteers; analyzing trends; and responding to requests from executive, legislative, and oversight bodies, as well as the public, for statistical crime data relating to criminal and other high-interest incidents. The Peace Corps provides information on past crimes to Volunteer applicants in the country in which the applicant has been invited to serve, and also uses this information for programmatic and training purposes in order to make informed decisions about potential changes in policy and/or programs. The system notifies in a timely manner Peace Corps headquarters and overseas staff who have a specific need to know when a crime has occurred against a Volunteer. Such staff makes safety and security,

medical, or management decisions regarding the Volunteer victim. The system also notifies the U.S. Embassy’s Regional Security Officers covering the post whenever an incident against a Volunteer occurs, so that they may initiate investigative procedures, as necessary.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Peace Corps Volunteers, Trainees, Peace Corps Response Volunteers, Returned Peace Corps Volunteers, Peace Corps Staff, alleged offenders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incident ID; incident type; classification; report type (i.e., standard, restricted); status; victim Volunteer or victim staff name; victim Volunteer or staff contact information, including phone number, and email address; victim Volunteer or staff status, race/ethnicity, gender, age, sector of assignment, marital status, training group, Entry-On-Duty date, and Projected Completion of Service date; date of incident; date type (i.e., exact, approximate); date incident was reported to post; incident submitted date; incident converted date; conversion reason; conversion approver; time of incident; country of incident; Post reporting the incident; if the incident occurred in the capital city; location type; location subtype; if property was lost, stolen, or damaged; U.S. dollar value of lost property; whether there was successful entry; if the Volunteer was alone; if the victim was targeted due to race, sexual orientation, American heritage, U.S. citizenship, and/or gender identity; threat delivery method; weapon type; if the incident occurred at a Peace Corps site; Peace Corps site the incident occurred; site location the incident occurred; city/town of incident; Designated Security Staff involvement; Victim Advocate involvement; if the victim was driving; victim’s vehicle type; other vehicle type; if the Volunteer’s vehicle was approved by Post; availability of safety equipment; use of safety equipment; alcohol usage by any vehicle drivers; official date of death; ransom demanded; if express kidnapping occurred; kidnapping resolution; if the victim Volunteer/staff heard about or witnessed a crime; if the victim Volunteer or staff was present; if the victim Volunteer/staff experienced injuries, harassment, sexual harassment, and/or a peeping Tom; if there is a related Stalking Report, if non-Peace Corps property was impacted; nature and details of the incident; staff names and roles that worked on the incident;

tasks assigned to staff, including title, name of staff member assigning the task, name of staff member assigned the task, task status, and task assigned; involvement of intimate partner violence; alcohol use by Volunteer at time of incident; post follow up or changes to original incident report, including case update title, date, type, note, creator's role, communication method with the victim Volunteer, and associated services; name of alleged offender; age range of alleged offender; gender of alleged offender; relationship of alleged offender to victim Volunteer/Staff; alcohol use by alleged offender at time of incident; type of alleged offender; if the offender was disclosed or was a stranger; and completed assessments, including assessment type (i.e. Post Incident Assessment, Serious and Imminent Threat Assessment for Security or Medical), staff member name who completed it, date completed, and assessment responses.

RECORD SOURCE CATEGORIES:

The information sources include Peace Corps office and program officials, employees, contractors, Peace Corps Volunteers, and other individuals or entities associated with Peace Corps; subjects of an investigation; individuals, businesses, or entities with whom the subjects are or were associated (e.g., colleagues, business associates, acquaintances, or relatives); Federal, State, local, international, and foreign investigative or law enforcement agencies; other government agencies; confidential sources; complainants; witnesses; concerned citizens; and public source materials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USERS:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, the Peace Corps may disclose all or a portion of the records or information contained in this system outside of the Peace Corps without the consent of the subject individual, if the disclosure is compatible with the purpose for which the record was collected, as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. Disclosure for Law Enforcement Purposes. Information may be disclosed to the appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information indicates a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Disclosure Incident to Requesting Information. Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, or to identify the type of information requested); when necessary to obtain information relevant to a Peace Corps decision concerning retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit.

C. Disclosure to Requesting Agency. Information may be disclosed to a Federal, State, local, or other public authority of the fact that this system of records contains information relevant to the requesting agency's retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for part or all of the record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. Disclosure to Office of Management and Budget. Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

E. Disclosure to Congressional Offices. Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. Disclosure to Department of Justice. Information may be disclosed for purposes of litigation, provided that in each case the disclosure is compatible with the purpose for which the records were collected. Disclosure for these purposes may be made to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Peace Corps is authorized to appear. This disclosure may be made when: 1. The Peace Corps, or any component thereof; 2. Any employee of the Peace Corps in his or her official capacity; 3. Any employee of the Peace Corps in his or her individual capacity where the Department of Justice or the Peace Corps has agreed to

represent the employee; or 4. The United States (when the Peace Corps determines that litigation is likely to affect the Peace Corps or any of its components) is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Peace Corps is deemed by the Peace Corps to be relevant and necessary to the litigation.

G. Disclosure to the National Archives. Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others. Information may be disclosed to contractors, grantees, consultants, or Volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Peace Corps and who have a need to have access to the information in the performance of their duties or activities for the Peace Corps. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints, and Appeals. Information may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to: the Office of Personnel Management, Office of Special Counsel, Federal Labor Relations Authority, U.S. Equal Employment Commission, and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management. Information may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Disclosure in Connection with Litigation. Information may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Peace Corps, including public filings with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

L. Disclosure to U.S. Ambassadors. Information from this system of records may be disclosed to a U.S. Ambassador or his or her designee in a country where the Peace Corps serves when the information is needed to perform an official responsibility, to allow the Ambassador to knowledgeably respond to official inquiries and deal with in-country situations that are within the scope of the Ambassador's responsibility.

M. Disclosure to all appropriate agencies, entities, and persons when (1) the Peace Corps suspects or has confirmed that there has been a breach of the system of records; (2) the Peace Corps has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Peace Corps (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Peace Corps' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

N. Disclosure to another Federal agency or Federal entity, when the Peace Corps determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Incident records are maintained in electronic format. Electronic records are stored in computerized databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Electronic records may be retrieved by incident number, volunteer first or last name, or by any available field recorded in the system.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

As there is no records disposal schedule for this information, electronic are being retained indefinitely. Records are retained to allow for historical data and trends analysis. The Annual Report of Crimes Against Volunteers is kept on file permanently for historical reference.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Peace Corps safeguards records in this system in accordance with applicable laws, rules, and policies to protect personally identifiable information against unauthorized access or disclosure. The Peace Corps has imposed strict controls to minimize such risks. Administrative safeguards include but not limited to: access to the information in this system is limited to authorized personnel with official duties requiring access, and whose roles have been authorized with such access permissions. All such individuals receive the appropriate privacy and cybersecurity training on an annual basis.

The physical controls in place include the servers storing electronic data are located offsite in a locked facility with access limited to authorized personnel. The servers are maintained in accordance with a government contract that requires adherence to applicable laws, rules, and policies on protecting individual privacy. Computerized records are safeguarded in a secured environment. Security protocols meet the promulgating guidance as established by the National Institute of Standards and Technology (NIST) Security Standards from Access Control to Data Encryption and Security Assessment and Authorization.

The technical controls in place include multiple firewalls, system access, encrypted data at rest, encrypted data in motion, periodic vulnerability scans to ensure security compliance, and security access logs. Security complies with applicable Federal Information Processing Standards (FIPS) issued by NIST. Access is restricted to specific authorized Peace Corps individuals who have internet access through work computers using a Personally Identity Verification (PIV). Individual users can only access records with the proper pre-approved accreditation.

RECORD ACCESS PROCEDURES:

Any individual who wants access to his or her record should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying documentation. Additional identification may be required in some instances. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

CONTESTING RECORD PROCEDURES:

Any individual who wants to contest the contents of a record should make a written request to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying documentation. Additional identification may be required in some instances. Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

NOTIFICATION PROCEDURES:

See "Record Access Procedures."

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

February 17, 2009, 74 FR 131

Dated: September 12, 2024

James Olin,

FOIA/Privacy Act Officer.

[FR Doc. 2024-21071 Filed 9-16-24; 8:45 am]

BILLING CODE 6051-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024-656 and CP2024-665]

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:* September 19, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2024–656 and CP2024–665; *Filing Title*: USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 46 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 11, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR

3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Katalin K. Clendenin; *Comments Due*: September 19, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–21108 Filed 9–16–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* September 17, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 11, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 46 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–656 and CP2024–665.

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–21118 Filed 9–16–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100995; File No. SR–MRX–2024–35]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Initiate Distributor Fees for MRX Options Trade Outline

September 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 3, 2024, Nasdaq MRX, LLC (“MRX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to initiate Distributor fees for MRX Options Trade Outline.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to initiate fees for the distribution of MRX Trade Outline. Distributor fees will be \$750 per month

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).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

for the End of Day product, and \$1,500 per month for the Intra-Day product.

Historical data will be available through ad hoc requests for information for \$500 per month of End of Day information, and \$750 per month for historical information. Current Distributors³ will also be able to purchase the most recent 36 months of historical data⁴ at the discounted price of \$6,000 for End of Day information, and \$9,000 for Intra-Day information. Historical information will be available starting in September 2017.

MRX Options Trade Outline

MRX Options Trade Outline will provide aggregate quantity and volume information for trades on the Exchange for all series⁵ during a trading session.⁶ Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume effected to open a position,⁷ characterized by origin type (Priority Customers,⁸ Broker-Dealers,⁹

Market Makers,¹⁰ Firm Proprietary,¹¹ and Professional Customers¹²); and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position,¹³ characterized by origin type (Priority Customers, Broker-Dealers, Market Makers, Firm Proprietary, and Professional Customers).¹⁴

Information will be provided on an End of Day, Intra-Day, and historical basis.

End of Day Information

The MRX Trade Outline End of Day file will also provide opening buy, closing buy, opening sell and closing sell information, including option first trade price, option high trade price, option low trade price, and option last trade price.

The End of Day file will be updated during an overnight process with additional fields¹⁵ and will be available the following morning, providing aggregate data for the entire trading session.

Intra-Day Information

Intra-Day information will be released in scheduled “snapshots” available every 10 minutes for all options series over the course of the trading day. These snapshots will be updated to reflect whatever activity occurred, or to indicate that no activity occurred.¹⁶

¹⁰ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Options 1 § 1(a)(21). The term “Competitive Market Maker” means a Member that is approved to exercise trading privileges associated with CMM Rights. See Options 1 § 1(a)(12). The term “Primary Market Maker” means a Member that is approved to exercise trading privileges associated with PMM Rights. See Options 1 § 1(a)(35).

¹¹ A “Firm Proprietary” order is an order submitted by a Member for its own proprietary account. See Options 7 § 1(c).

¹² A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7 § 1(c).

¹³ This includes the aggregate number of “closing purchase transactions” in the affected series, defined as an Exchange Transaction that will reduce or eliminate a short position in an options contract, see Options 1, Section 1(a)(9), and the aggregate number of “closing writing transactions,” defined as an Exchange Transaction that will reduce or eliminate a long position in an options contract. See Options 1, Section 1(a)(10).

¹⁴ These are the same types of information available on PHOTO, and the other trade outline products offered by Nasdaq exchanges.

¹⁵ The additional fields are: First Trade Price, High Trade Price, Low Trade Price, Last Trade Price, Underlying Close, Moneyness, Total Exchange volume, Total Industry Volume for the Series, and Open Interest.

¹⁶ Subscribers will receive the first snapshot at 9:42 a.m. ET, representing data captured from 9:30 a.m. to 9:40 a.m., and the second calculation at 9:52 a.m., representing data from both the most recent snapshot and previous snapshots, and continuing over the course of the trading day. The final Intra-Day snapshot will be distributed at 4:15 p.m.

This is the same schedule currently offered on PHLX, ISE, GEMX, and Nasdaq Options Market.¹⁷

Historical Information

Historical data will be available through ad hoc requests for information in both End of Day and Intra-Day formats for all option series traded for every calendar month after September 2017, based on specific request.¹⁸ Historical data is useful in analyzing option trade and volume data, evaluating historical trends in the trading activity of a particular option series, and creating and testing trading models and analytical strategies. In Nasdaq’s experience, historical information is often purchased concurrently with a new subscription to a trade outline product.

Patterned after PHLX Options Trade Outline “PHOTO,”¹⁹ MRX Options Trade Outline will replicate in substance²⁰ PHOTO and the other trade outline products currently offered by Nasdaq ISE, LLC (“ISE”),²¹ Nasdaq GEMX, LLC (“GEMX”),²² and the options market operated by the Nasdaq Stock Market LLC (“Nasdaq Options Market” or “NOM”).²³ Similar products are also available from options markets not affiliated with Nasdaq such as Cboe

¹⁷ See *Infra*, notes 21 through 23.

¹⁸ Market participants generally use historical files for model testing and research, and the period of time required by a particular market participant will depend on its unique testing and research needs as well as whether it is using End of Day or Intra-Day information. Some customers, for example, may request years of data, while others only months, or even a single month. The same principle applies to End of Day vs. Intra-Day information.

¹⁹ See PHLX Rules, Options 7, Section 10; Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR–Phlx–2010–121) (introducing PHOTO on September 1, 2010).

²⁰ The underlying information for MRX Options Trade Outline will be the same as the other trade outline products offered by the Nasdaq exchanges. Presentation will differ, however, in that data will not be subdivided into categories. For example, the trade outline products offered by PHLX, ISE, GEMX and NOM subdivide the aggregate volume traded for each reported series into categories according to the quantity of contracts (less than 100, 100–199, and greater than 200). MRX Options Trade Outline will not separate this information into quantitative categories, but rather will provide the same aggregate volume information as PHOTO and the other Nasdaq exchanges without separating the information into categories according to the quantity of contracts.

²¹ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

²² See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

²³ See Nasdaq Rules, Options 7, Section 4 (Nasdaq Options Trade Outline (“NOTO”)).

³ A “Current Distributor” is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

⁴ The most recent 36 months is measured based on the date of purchase of the 36 months of data by a Current Distributor.

⁵ Every options series trades as a distinct symbol; the terms “series” and “symbol” are therefore synonyms.

⁶ See Securities Exchange Act Release No. 100789 (August 21, 2024), 89 FR 68680 (August 27, 2024) (SR–MRX–2024–31).

⁷ This includes the aggregate number of “opening purchase transactions,” defined as an Exchange Transaction that will create or increase a long position in an options contract, see Options 1, Section 1(a)(27), and the aggregate number of “opening writing transactions,” defined as an Exchange Transaction that will create or increase a short position in an options contract. See Options 1, Section 1(a)(28).

⁸ The term “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Options 1 § 1(a)(36).

⁹ A “Broker-Dealer” order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account. See Options 7 § 1(c).

Options Exchange (“Cboe”),²⁴ NYSE American Options (“NYSE American”),²⁵ NYSE Arca Options (“NYSE Arca”),²⁶ BOX Options Market LLC (“BOX”),²⁷ MIAx Pearl Options Exchange (“Pearl”),²⁸ and others. MRX Options Trade Outline, like all of these other trade outline products, provides data to help market participants understand market sentiment on the Exchange and to support the creation of trading models useful in both options and equities markets.

Nasdaq’s experience is that investment banks, market makers, asset managers and other buy-side investors purchase trade outline products. In general, the relative value of these products depends on the volume of transactions included; the greater the volume of transactions, the greater the value of the data.

MRX Options Trade Outline will provide proprietary Exchange trading data and will not include any intra-day trading data from any other exchange.²⁹ The information provided, both in End of Day and Intra-Day formats, will not be a real-time data feed.

Proposed Fees

End of Day and Intra-Day Information

The Exchange proposes to offer the End of Day product for \$750 per month and the Intra-Day product at \$1,500 per month.

Historical Information

The Exchange proposes to offer historical data for \$500 per month for

End of Day data, and \$750 per month for Intra-Day information based on ad hoc requests for particular months of information.

The Exchange also proposes to offer a discounted fee of \$9,000 in total for the most recent 36 months³⁰ of historical Intra-Day data for Current Distributors,³¹ and a discounted fee of \$6,000 in total for the most recent 36 months of End of Day data for Current Distributors.

This is a substantial discount from the proposed fees for ad hoc data requests. With respect to End of Day data, ad hoc requests are \$500 per month. Thirty-six months would cost a total of \$18,000. The proposed discounted fee of \$6,000 is two-thirds less than the standard rate. With respect to Intra-Day information, ad hoc requests are \$750 per month. Thirty-six months would cost a total of \$27,000. The proposed discounted fee of \$9,000 for Intra-Day information is also two-thirds less than the standard rate.

Eligibility for the discount will depend on the type of current subscription. A current purchaser of End of Day data would be eligible for the historical End of Day product at the reduced rate. A current purchaser of the Intra-Day product would similarly be able to purchase the historical Intra-Day product at the reduced rate. A purchaser of both the current End of Day and Intra-Day products would be entitled to purchase both types of history at the reduced rate. The fees for historical data are linked to the current product because effective historical testing requires a comparison of similar licenses. Effective testing of the End of Day product, for example, requires End of Day historical data, and the same would hold true for Intra-Day data.

The 36-month period will be based on the date of purchase of the 36 months of data by a Current Distributor. For example, a customer that buys the End of Day product for the first time in September 2024 would also be able to purchase historical End of Day data for the period September 2021 through September 2024 (inclusive) at the discounted rate. Similarly, a customer with an existing End of Day subscription in September 2024 would be able to purchase the historical End of Day data from September 2021 through September 2024 at the discounted rate.

³⁰ The most recent 36 months is measured based on the date of purchase of the 36 months of data by a Current Distributor.

³¹ A “Current Distributor” is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

The same reasoning would apply to Intra-Day customers.³²

Many customers use historical data to test their strategies and models, and our discussions with current and former customers and experience indicate that 36 months of data is sufficient for most customer needs, and is an effective baseline for review.

For customers that request historical information outside of the three year period, end of day historical information can be purchased through ad hoc requests for monthly information for \$500 per request per month, and Intra-Day information can be purchased at \$750 per request per month.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees and other charges because: (i) the trade outline products offered by multiple exchanges are substitutes, and customers are free to choose which product they purchase; and (ii) the proposed fees are comparable to the fees charged by other exchanges, and customers are free to purchase other products if the Exchange has mistaken the value of its product.

Substitution

Trade outline products have been available on multiple exchanges for many years and are well known in the market and used by many market participants. PHLX Options Trade Outline, which is a model for MRX Options Trade Outline, has been available for well over a decade.³⁵

³² A customer may use the proposed historical data discount more than once. For example, a Current Distributor that purchases 36 months of historical data at a discount, but later terminates that subscription, would be eligible to purchase another 36 months of historical data (based on the date of purchase) upon renewing that subscription. (Current Distributors that never terminate would have no need for a second purchase, as they would already possess the most recent months of historical data.)

³³ 15 U.S.C. 78f(b).

³⁴ 15 U.S.C. 78f(b)(4) and (5).

³⁵ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17,

²⁴ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-Day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price, and transaction type).

²⁵ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²⁶ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²⁷ See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

²⁸ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

²⁹ The End of Day report includes a field that presents Total Industry Volume for the Series.

Similar products available on other Nasdaq exchanges include ISE Trade Profile,³⁶ GEMX Trade Profile,³⁷ and Nasdaq Options Trade Outline.³⁸ Trade outline products are also offered by competitor exchanges such as Cboe,³⁹ NYSE American,⁴⁰ NYSE Arca,⁴¹ BOX,⁴² and MIAX PEARL.⁴³ The trade outline products offered by the Nasdaq-affiliated exchanges provide exactly the same information as MRX Options Trade outline, and those offered by other exchanges provide substantially the same information, including both Intra-Day and End of Day data.

The information provided by one exchange in its trade outline product is generally similar to that provided by other exchanges for competing products because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange; the greater the volume of transactions, the greater the value of the data. Customers can choose not to purchase the trade outline product of one exchange and substitute it for that of another

exchange. This applies to both current and historical data.

Customers can also choose not to purchase a trade outline product at all. Trade outline products are designed to help investors understand underlying market trends to improve the quality of investment decisions, but are not necessary to execute a trade. Customers may choose to forego the information from MRX Options Trade Outline or any of its competitor products when making a trade.

Nasdaq and its affiliates have observed that customers purchase sufficient data to provide a view of the market, but not more, as the value of data from each additional exchange yields diminishing returns. As a result, all exchanges are limited in what they will be able to charge for Trade Outline.

As the Commission and courts⁴⁴ have recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”⁴⁵ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”⁴⁶ The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system

“has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁴⁷ MRX Options Trade Outline is in direct competition with multiple exchanges that offer similar products in end of day and intra-day formats.⁴⁸

The discounted fees for historical data, like the purchase of the end of day, Intra-Day and Derived Data licenses, is also subject to competition. Any exchange that wishes to provide discounts for historical data would be able to do so with an immediately effective fee filing in response.

Comparability

The proposed fees are comparable to the fees charged by similarly situated exchanges.

As explained above, the value of a trade outline product is determined in part by the number of underlying transactions reflected in the data. MRX has a market share comparable to Cboe C2 and MIAX Emerald, in the range of approximately 2% to 4% at the time of this filing.⁴⁹ For intra-day products, MIAX Emerald charges \$2,000⁵⁰ and Cboe C2 charges \$1,000.⁵¹ The proposed fee of \$1,500 is within that range and comparable to those fees.

For End of Day products, MIAX Emerald charges \$600,⁵² and Cboe C2 charges \$500.⁵³ Although the proposed fees of \$750 are above that range, MRX believes that the relative value of Intra-Day and End of Day fees should be in the ratio of 2:1, and therefore MIAX Emerald and Cboe C2 have somewhat undervalued their end of day products. If Nasdaq is incorrect in that

2010) (SR-Phlx–2010–121) (introducing PHOTO on September 1, 2010).

³⁶ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

³⁷ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

³⁸ See Nasdaq Rules, Options 7, Section 4 (Nasdaq Options Trade Outline (“NOTO”)).

³⁹ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe–2022–023) (describing End-of-Day and Intraday Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price and transaction type).

⁴⁰ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER–2021–46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

⁴¹ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEARCA–2021–82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

⁴² See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX–2023–09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

⁴³ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL–2021–24) (introducing the Open-Close Report).

⁴⁴ The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC* 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” *NetCoalition I* at 535. (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission’s conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” *Id.* (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74771 (December 9, 2008) (SR-NYSEARCA–2006–21)).

⁴⁵ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEARCA–2006–21).

⁴⁶ See *id.*

⁴⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁴⁸ These substitute products include NOTO, ISE Trade Profile, GEMX Trade Profile data; open-close data from Cboe C1, C2, BZX, and EDGX; and Open Close Reports from MIAX Options, Pearl, and Emerald.

⁴⁹ See *NasdaqTrader.com*, “Options Market Statistics,” available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

⁵⁰ See MIAX Emerald Options Exchange Fee Schedule as of April 18, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAX_Emerald_Fee_Schedule_04182024.pdf.

⁵¹ See Cboe DataShop, “Cboe Open-Close Volume Summary,” available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

⁵² See MIAX Emerald Options Exchange Fee Schedule as of April 18, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAX_Emerald_Fee_Schedule_04182024.pdf.

⁵³ See Cboe DataShop, “Cboe Open-Close Volume Summary,” available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

assessment, customers will purchase the products of its competitors.

Nasdaq is not aware of another exchange that provides a discount for historical data other than its own affiliates. Volume on MRX is comparable to volume on BX and GEMX. The proposed discounted prices of \$6,000 for 36 months of historical End of Day data and \$9,000 for 36 months of historical Intra-Day data for MRX are identical to the proposed discounts for the BX exchange, submitted congruently with this filing. The proposed discounted prices for Intra-Day data for MRX and BX are also identical to that of GEMX. Although proposed fees for 36 months of End of Day data for MRX and BX (\$6,000) are higher than those for GEMX (\$4,800), the overall pricing methodology of offering three years of historical data for the price of one year of ad hoc requests for information is consistent across all of these exchanges, and therefore comparable.⁵⁴

With respect to ad hoc requests for information, MRX provides a discount from current requests. Current End of Day information is available for \$750 per month, while ad hoc requests for historical End of Day information is available for \$500 per month. Similarly, Current Intra-Day information is available for \$1,500 per month, while ad hoc requests for historical Intra-Day information is available for \$750 per month. This is identical to the fee structure proposed for the BX exchange, and comparable to the fee structure for the GEMX exchange (which offers current End of Day data for \$575 per month and historical End of Day data for \$400 per month; current Intra-Day data is offered for \$1,500 per month, and historical Intra-Day data is offered for \$750 per month).

If the Exchange is incorrect in its assessments for any of these fees, current and prospective customers will elect not to purchase Trade Outline.

The Proposal Does Not Permit Unfair Discrimination

Nothing in the proposal treats any category of market participant any differently from any other category of market participant.

The proposed fees, including both current and historical information, apply equally to all current and potential distributors. Trade Outline is

available to all market participants, including members and non-members, and all market participants receive the same information.

It is not unfair discrimination to provide a discount for 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product. Any firm would be able to become a Current Distributor at any time by subscribing to Trade Outline, and would be able to cancel the subscription at any time after receiving the 36 months of historical data for the proposed discounted fee. More specifically, a firm that is not a Current Distributor may obtain access to the 36 months of historical data at a discount by becoming a Current Distributor for a limited time and then terminating the subscription.

It is not unfair discrimination to limit the discount for 36 months of historical data to Current Distributors. Historical information is generally used by Current Distributors to test their strategies and trading models, and Current Distributors are therefore in the best position to benefit from the historical data. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

For all of these reasons, the proposal does not permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intermarket Competition

Nothing in the proposal burdens inter-market competition (the

competition among self-regulatory organizations).

As discussed above, Trade Outline is subject to direct competition from other options exchanges that offer substitutes. Any of these exchanges can replicate this proposal in full or in part, and nothing in the proposal would interfere with the ability of any exchange to do so.

Intra-Market Competition

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data). Trade Outline is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase these products can do so on a non-discriminatory basis.

Offering the 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product, will not burden competition because non-subscribers are free to purchase a current subscription. Moreover, a firm that is not a Current Distributor may become a Current Distributor and then cancel the product after receiving the historical discount. As such, firms that are not Current Distributors will have an opportunity to pay the same fees for the most recent 36 months of historical data as Current Distributors. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁵⁵ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

⁵⁴ The fee for an ad hoc request for one month of End of Day data on the GEMX exchange is \$400, and the discounted fee for 12 months of data is $\$400 \times 12$, or \$4,800. The fee for an ad hoc request for one month of End of Day data on the BX and MRX exchanges is \$500, and the discounted fee for 12 months of data is $\$500 \times 12$, or \$6,000.

⁵⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2024-35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MRX-2024-35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MRX-2024-35 and should be submitted on or before October 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21034 Filed 9-16-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100999; File No. SR-MEMX-2024-36]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Concerning Transaction Pricing

September 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on September 6, 2024, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to (i) modify the required criteria under Liquidity Provision Tier 1; and (ii) reduce the fee and modify the required criteria under Liquidity Removal Tier 1, as further described below.⁴

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15.77% of the total market share of executed volume of equities trading.⁵ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2.59% of the overall market share.⁶ The Exchange in particular operates a "Maker-Taker" model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides

⁴ The Exchange initially filed the proposed Fee Schedule changes on August 30, 2024 (SR-MEMX-2024-35). On September 6, 2024, the Exchange withdrew that filing and submitted this proposal.

⁵ Market share percentage calculated as of September 6, 2024. The Exchange receives and processes data made available through consolidated data feeds (*i.e.*, CTS and UTDF).

⁶ *Id.*

⁵⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a standard rebate of \$0.0015 per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, “Added Displayed Volume”).⁷ The Exchange also currently offers Liquidity Provision Tiers 1–6, among other volume-based tiers, under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 1, as further described below.

The Exchange currently provides an enhanced rebate of \$0.0034 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving (1) an ADAV⁸ (excluding Retail Orders) that is equal to or greater than 0.50% of the TCV;⁹ or (2) a Step-Up ADAV¹⁰ from June 2024 (excluding Retail Orders) of the TCV that is equal to or greater than 0.07% of the TCV in securities priced at or above \$1.00 per share and an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share. Now, the Exchange proposes to modify alternative criteria (2) of Liquidity Provision Tier 1, such that a Member may qualify for such alternative criteria by achieving both the current requirements of alternative criteria (2) and also achieving a Remove ADV¹¹ that is equal to or greater than 0.45% of the TCV. Thus, the Exchange now proposes to keep existing alternative criteria (1) intact while adding an additional requirement to the current alternative criteria (2), such that a Member meets alternative criteria (2) of

such tier by achieving (i) a Step-Up ADAV from June 2024 (excluding Retail Orders) of the TCV that is equal to or greater than 0.07% of the TCV in securities priced at or above \$1.00 per share, (ii) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share, and (iii) a Remove ADV that is equal to or greater than 0.45% of the TCV.

The proposed change to Liquidity Provision Tier 1 is designed to encourage Members to maintain or increase their order flow, including in the form of orders that both add and remove liquidity, on the Exchange in order to qualify for the enhanced Liquidity Provision Tier 1 rebate. While the Exchange’s overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that adding a requirement to criteria (2) of Liquidity Provision Tier 1 which encourages both liquidity-adding and liquidity-removing volume may contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.

Liquidity Removal Tiers

The Exchange currently charges a standard fee of 0.0030 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, “Removed Volume”). The Exchange also currently offers Liquidity Removal Tier 1 under which qualifying Members are charged a discounted fee by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify Liquidity Removal Tier 1 by reducing the fee charged for executions of Removed Volume and by modifying the required criteria under such tier, as further described below.

Under Liquidity Removal Tier 1, the Exchange currently charges a discounted fee of \$0.00295 per share for executions of Removed Volume by achieving (1) an ADV¹² that is equal to or greater than 0.70% of the TCV and (2) a Remove ADV that is equal to or greater than 0.35% of the TCV.¹³ Now, the

Exchange proposes to reduce the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to \$0.0029 per share, and to modify the required criteria such that a Member would now qualify for such tier by achieving 1) an ADV that is equal to or greater than 0.70% of the TCV and (2) a Remove ADV that is equal to or greater than 0.50% of the TCV. Thus, the proposed change would reduce the fee charged from \$0.00295 to \$0.0029 per share and increase the Remove ADV threshold by 0.15% (*i.e.*, from 0.35% to 0.50%) of the TCV.

The proposed changes to Liquidity Removal Tier 1 are designed to encourage Members to maintain or increase their order flow, including in the form of orders that remove liquidity, to the Exchange in order to qualify for the proposed reduction in the fee for executions of Removed Volume. While (as mentioned above) the Exchange’s overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing criteria under certain tiers that are based on different types of volume that Members may choose to achieve, such as the existing criteria that includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The Exchange believes that the proposed reduction in the fee for executions of Removed Volume by \$0.00005 per share represents a modest reduction and remains commensurate with the proposed new required criteria. The Exchange believes that the proposed increase in the Remove ADV requirement will encourage the submission of additional Removed Volume, thereby contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁴ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,¹⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other

⁷ The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume” with a Fee Code of “B”, “D” or “J”, as applicable, on execution reports.

⁸ As set forth on the Fee Schedule, “ADAV” means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and “Displayed ADAV” means ADAV with respect to displayed orders.

⁹ As set forth on the Fee Schedule, “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹⁰ As set forth on the Fee Schedule, “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.

¹¹ As set forth on the Fee Schedule, “Remove ADV” means ADV with respect to orders that remove liquidity.

¹² As set forth on the Fee Schedule, “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis.

¹³ The pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Removed volume from MEMX Book, Liquidity Removal Tier 1” with a Fee Code of “R1” to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after

the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange’s market quality associated with higher levels of market activity, such as higher levels of

liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the proposed changes to Liquidity Provision Tier 1 and Liquidity Removal Tier 1 are reasonable, equitable and not unfairly discriminatory because, as described above, such changes are available to all Members on an equal basis, and are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding and/or liquidity removing orders, to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or a discounted fee for executions of Removed Volume, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the modification to the criteria under Liquidity Provision Tier 1 and the reduced fee under Liquidity Removal Tier 1 remain commensurate with the corresponding required criteria under each such tier and are reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. The proposal to modify the criteria under Liquidity Provision Tier 1, to modify the criteria under Liquidity Removal Tier 1, and to reduce the fee under Liquidity Removal Tier 1 is not unfairly discriminatory because it applies equally to all Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act¹⁷ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange’s statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional liquidity-adding and liquidity-removing order flow to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission’s goal in adopting Regulation NMS of fostering competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”¹⁸

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow in the form of liquidity adding, non-displayed orders to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed modified Liquidity Provision Tier 1 and the proposed modified Liquidity Removal Tier 1 would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the proposed new required criteria under each such tier are commensurate with the corresponding rebate for liquidity-adding order flow and proposed reduced fee for liquidity-removing order flow, as applicable. Additionally, as noted above, the proposed changes to Liquidity Provision Tier 1 and Liquidity Removal Tier 1

¹⁶ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

¹⁸ See *supra* note 16.

would apply to all Members equally. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15.6% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market.

Accordingly, competitive forces constrain the Exchange's transaction fees and rebates and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the

importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹⁹ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. SEC*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."²⁰ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²¹ and Rule 19b-4(f)(2)²² thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

¹⁹ *Id.*

²⁰ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²² 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MEMX-2024-36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2024-36 and should be submitted on or before October 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–21036 Filed 9–16–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100998; File No. SR–OCC–2024–009]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change by The Options Clearing Corporation Concerning Its Backtesting Framework and To Establish a Resource Backtesting Margin Charge

September 11, 2024.

I. Introduction

On July 11, 2024, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR–OCC–2024–009 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 19b–4² thereunder. The Proposed Rule Change would amend the OCC rules to more comprehensively describe its approach to backtesting, including underlying assumptions; establish a new category of backtesting regarding the maintenance of sufficient margin resources; implement a new margin add-on charge based on breaches of the new category of resource backtesting; and clarify governance and escalation criteria related to the updated backtesting framework. The Proposed Rule Change was published for public comment in the **Federal Register** on July 30, 2024.³ The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Description of the Proposed Rule Change

OCC is a central counterparty (“CCP”), which means that as part of its function as a clearing agency it interposes itself as the buyer to every seller and the seller to every buyer for certain financial transactions. As the

CCP for the listed options markets in the U.S.,⁴ as well as for certain futures and stock loans, OCC is exposed to certain risks arising from providing settlement and clearing services to its Clearing Members.⁵ Because OCC is obligated to perform on the contracts it clears even where one of its Clearing Members defaults, one such risk to which OCC is exposed is credit risk in the form of exposure to its members’ trading activities. OCC manages such credit risk, in part, by collecting collateral from its members in the form of margin. OCC evaluates the margin requirements it imposes on members by periodically comparing such requirements to the potential risk of loss arising out of a member default (*i.e.*, backtesting).⁶ While backtesting does not directly establish a member’s margin requirements, OCC maintains authority under its rules to collect additional margin if OCC identifies—through backtesting results or otherwise—issues with its margin coverage.⁷

OCC’s current backtesting framework measures its Clearing Members’ losses in excess of calculated margin requirements to evaluate the adequacy of OCC’s model performance, improve margin methodology and risk assessment processes, and identify trends in exceedances that may indicate broader behavioral changes by market participants. However, OCC’s current backtesting framework does not provide detailed descriptions of the backtesting process, nor does it require OCC to measure whether it has collected sufficient margin resources in the event of a Clearing Member default (a process often referred to as “resource sufficiency” evaluation), or detail the underlying assumptions and governance process for the framework. To address these issues, the Proposed Rule Change would update OCC’s current backtesting framework by:

- updating the current backtesting framework to more comprehensively describe material aspects of model backtesting;

- providing for a new category of backtesting—“Resource Backtesting”—that assesses the adequacy of OCC’s margin resources to cover its credit exposure at the Clearing Member level; and

- detailing the underlying assumptions and reporting structure for the entire backtesting framework to provide for clearer governance procedures, including escalation criteria.

Additionally, OCC lacks a mechanism with which to collect additional margin resources in instances where backtesting suggests that OCC may otherwise not have sufficient resources to cover its credit exposure during a Clearing Member’s default. To that end, OCC proposes to implement a new add-on charge called the “Resource Backtesting Margin Charge.” Although this add-on would not be part of the backtesting framework, OCC would use the proposed Resource Backtesting category of backtesting to determine if additional margin in the form of the Resource Backtesting Margin Charge is necessary and in what amount. Specifically, OCC would apply the Resource Backtesting Margin Charge to Clearing Members who experience Resource Backtesting deficiencies that bring their margin coverage rates below a 99% coverage target. OCC also proposes to include in the backtesting framework governance procedures related to the Resource Backtesting Margin Charge.⁸

A. OCC’s Current Backtesting Framework

OCC conducts daily backtesting of collateral requirements generated by its margin methodology using standard predetermined parameters and assumptions. OCC uses such backtesting to update its credit risk management and margin methodology⁹ or to adjust model parameters. OCC relies on backtesting to evaluate the accuracy of its margin models by comparing the calculated margin coverage for each margin account against the realized profit and loss on the margined

⁴ OCC describes itself as “the sole clearing agency for standardized equity options listed on a national securities exchange registered with the Commission (‘listed options’).” See Securities Exchange Act Release No. 96533 (Dec. 19, 2022), 87 FR 79015 (Dec. 23, 2022) (File No. SR–OCC–2022–012).

⁵ Capitalized terms have the same meaning as provided in OCC’s By-Laws and Rules, which can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁶ Under the rules applicable to OCC, backtesting means an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models. 17 CFR 240.17ad–22(a) (“Backtesting”).

⁷ See Notice of Filing, 89 FR at 61212.

⁸ Under the Proposed Rule Change, OCC also would make conforming changes to its rules and internal policies and procedures to reflect these amendments and facilitate implementation, including consolidating internal procedures for all backtesting into a Backtesting Procedure and associated technical document, updating references and descriptions, and inserting headings. See Notice of Filing, 89 FR at 61219–20. OCC provided the new Backtesting Procedure as confidential Exhibit 3B, and the updated technical document as confidential Exhibit 3C to File No. SR–OCC–2024–009.

⁹ OCC’s margin methodology, adopted in 2006, is titled the System for Theoretical Analysis and Numerical Simulation (“STANS”). See Notice of Filing, 89 FR at 61212–13.

²³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 100584 (July 24, 2024), 89 FR 61211 (July 30, 2024) (File No. SR–OCC–2024–009) (“Notice of Filing”).

portfolios. However, OCC's policies and procedures do not currently identify the categories of relevant assumptions, provide for how they are established or modified, or explain how assumptions may differ across different types of backtesting depending on the purpose of those backtesting variants.

Currently, OCC conducts both backtesting of hypothetical portfolios (which OCC currently refers to as "Model Backtesting") and actual portfolios (which OCC currently refers to as "Business Backtesting").¹⁰ OCC's internal backtesting procedures address data acquisition, application of statistical tests, analyses initiated to address root causes of exceedances, reporting of results, annual methodology reviews, and issue escalation.

OCC's backtesting framework includes its Margin Policy.¹¹ The Margin Policy requires that OCC's Financial Risk Management Department ("FRM") continually evaluates the effectiveness of its margin models through daily backtesting of each margin account.¹² The Margin Policy requires further that OCC's Quantitative Risk Management business unit ("QRM") design backtests to focus on satisfying OCC's regulatory obligations, identifying potential opportunities to improve the margin methodology, and identifying trends in exceedances that may be indicative of behavioral changes by market participants. Acknowledging that problems may arise from both technical¹³ and model-related issues, the Margin Policy directs QRM to design backtests to find potential opportunities to improve OCC's risk-assessment processes. Under the current backtesting framework, FRM performs Business Backtesting to measure whether the losses observed for a constant set of positions over OCC's two-day margin period of risk were in excess of the total risk charges (*i.e.*, aggregate of expected shortfall, stress test charges and add-on charges) required for the account. FRM is then directed to classify any

observation in which losses are in excess as an exceedance.

With regard to governance, the current Margin Policy directs QRM to report identified problems and overall performance to FRM and the Model Risk Working Group ("MRWG"), which then determines whether the results require escalation to OCC's Management Committee ("MC"). The Margin Policy further requires routine reporting from QRM to the MRWG that accumulate daily backtesting results and detailed descriptions of the accounts that have incurred exceedances, trends, and causes of the exceedances. As with the escalation of identified problems and overall performance, the Margin Policy directs QRM to provide notable results from these reviews to the Chief Financial Risk Officer, who is the head of FRM, and the MRWG; and that the MRWG similarly determines whether escalation is warranted to the MC, which may decide what remedial actions may be taken. Under the current Margin Policy, QRM must also perform a monthly review of parameters and assumptions for Business Backtesting, and report such review to the MRWG to discuss and escalate issues as necessary.

B. Proposed Updates to the Backtesting Framework

OCC's current backtesting framework does not specify certain materials aspects of OCC's backtesting processes, namely, a comprehensive description of the different types of backtesting OCC performs and their respective purposes, and how OCC establishes and modifies its assumptions for backtesting. Importantly, the current framework does not require OCC to conduct backtesting to measure margin resource sufficiency, but rather, is designed to identify technical and model-based issues as described above. OCC's current backtesting framework also lacks detailed guidance around governance, specifically the reporting process and escalation criteria and thresholds, which could lead to inconsistencies in the escalation of similar backtesting exceedances or deficiencies, and reviews of backtesting assumptions.

To help mitigate these issues, OCC proposes to:

- more comprehensively describe material aspects of its model backtesting framework, including the purpose and scope of the backtesting OCC performs;
- introduce a new category of backtesting, Resource Backtesting, to measure whether OCC's margin resources adequately cover its credit exposure at the Clearing Member level;
- list the assumptions underlying OCC's backtesting and the process for

reviewing and modifying those assumptions; and

- outline in more detail the backtesting reporting process, including which decision-makers are involved and escalation criteria for exceedances or deficiencies and reviews.

1. Model Backtesting

Under the Proposed Rule Change, OCC would consolidate discussion of its two current "Model" and "Business" backtesting programs under the heading of Model Backtesting, without changing its current process for conducting daily backtesting of hypothetical and actual portfolios to evaluate the performance of its margin methodology. OCC proposes to add descriptions in the Margin Policy to explain that FRM conducts Model Backtesting of hypothetical portfolios to target specific aspects of the models that may be masked by the backtesting of actual portfolios, because margin accounts may have thousands of positions in many diverse products. Under the Proposed Rule Change, the Margin Policy would include additional details consistent with OCC's current backtesting practices. Such details would include that OCC would conduct Model Backtesting (i) over a set liquidation horizon; (ii) at the marginable account level;¹⁴ and (iii) at a 99 percent confidence level. The Margin Policy would add a definition of "exceedance" to mean a daily outcome in which the loss in portfolio value over the applicable time horizon is larger in magnitude than what the daily STANS model predicted at the start of that time horizon.

OCC would continue to limit the purpose of Model Backtesting to assessing the performance of OCC's margin models in calculating margin requirements, as opposed to assessing the performance of other aspects of OCC's credit risk management. Consistent with this intent, the Margin Policy would state that OCC would continue to exclude collateral from Model Backtesting that is not modeled by STANS, such as collateral that is valued using the more traditional method of fixed collateral haircuts outside of the STANS margin methodology, or collateral that does not capture changes in market risk factors, such as add-ons that are unrelated to

¹⁰ See generally Securities Exchange Act Release Nos. 73749 (Dec. 5, 2014), 79 FR 73673 (Dec. 11, 2014) and 75290 (June 24, 2015), 80 FR 37323 (June 30, 2015) (File No. SR-OCC-2014-810).

¹¹ OCC provided the Margin Policy as confidential Exhibit 5B to File No. SR-OCC-2024-009. OCC stated that, generally, "the Margin Policy establishes a process for ongoing monitoring, review, testing and verification of OCC's risk-based margin system, including by requiring OCC to conduct daily backtesting, conduct analysis of exceedances, and report results at least monthly through OCC's governance process. . . ." See Notice of Filing, 89 FR at 61212.

¹² See Notice of Filing, 89 FR at 61213.

¹³ OCC indicated that such technical issues may arise from corporate actions and special dividends. *Id.*

¹⁴ See Notice of Filing, 89 FR at 61214 ("OCC conducts Model Backtesting at this level because Model Backtesting exceedances potentially indicate issues that could be actively impacting OCC's margin requirements for the margin accounts. In addition, backtesting at this level is consistent with OCC's obligations in its capacity as a derivatives clearing organization ("DCO") registered with the Commodity Futures Trading Commission.")

changes in market risk factors (*e.g.*, when a Clearing Member's operational or financial condition presents elevated risks). The collateral that is not modelled by STANS instead would be accounted for under the new backtesting category of Resource Backtesting, as described in Section II.B.2. below.¹⁵

2. Resource Backtesting

In addition to formalizing the process of performing daily Model Backtesting in the Margin Policy, OCC would add a new category of backtesting, called Resource Backtesting, to evaluate whether OCC's financial resources are sufficient to cover its credit exposures during a Clearing Member default. Pursuant to the proposed Margin Policy, FRM would be required to conduct Resource Backtesting using actual portfolios at the Clearing Member level to evaluate whether OCC maintains sufficient financial resources to cover its credit exposure to the liquidation portfolio of each Clearing Member from the last deposit of margin assets until the end of the liquidation horizon following the Clearing Member's default. Since Resource Backtesting would be designed to determine whether the liquidating value of a Clearing Member's portfolios would be positive or negative at the end of OCC's liquidation horizon, it would take into account observed intraday position changes from the time of the last good margin collection until the assumed point of default.

The proposed Margin Policy would set the coverage target for Resource Backtesting at 99 percent, meaning that any Resource Backtesting deficiencies should be no more than one percent in the rolling 12-month lookback period for each Clearing Member. The proposed changes to the Margin Policy would define a "deficiency" as a daily result where the prefunded financial resources collected from the Clearing Member would have been insufficient to cover the potential loss in case of its default (*i.e.*, a negative liquidating value of the Clearing Member's portfolios).

While OCC conducts Model Backtesting at the account level, OCC would consider resources and exposures across a given member's account for Resource Backtesting. Because OCC's By-Laws and Rules provide for different types of liens over different types of accounts, OCC would consider the liens

on a particular account when netting deficits and surpluses across account types to ensure that surpluses in an account over which OCC maintains a restricted lien do not offset losses in another account for purposes of Resource Backtesting.

In contrast with Model Backtesting, OCC would include collateral that is not modelled by STANS in Resource Backtesting. The margin resources that would be considered by Resource Backtesting would be limited to a member's margin requirements; accordingly, any excess margin collateral would be excluded. OCC would continue to exclude Clearing Fund deposits from all margin backtesting.

3. Backtesting Assumptions and Reporting

The proposed Margin Policy would explicitly list certain assumptions that inform OCC's backtesting practices: the timing of default, liquidation horizon, available resources, confidence level, lookback period, and the backtesting portfolio.¹⁶ The proposed changes to the Margin Policy would define OCC's process for evaluating and changing such assumptions. Specifically, changes to backtesting assumptions would require escalation by MRWG and the MC, with ultimate approval by the Risk Committee ("RC"). Under the proposed changes to the Margin Policy, changes to backtesting assumptions that would result in or arise from changes to OCC's margin methodology, in such a way as to require a rule change proposal to be filed with the Commission, would continue to require the approval of OCC's Board of Directors.

As proposed, the Margin Policy would provide that, at least monthly,¹⁷ FRM will review the results of backtesting to identify any Model Backtesting exceedances or Resource Backtesting deficiencies and present a detailed analysis of such information, as well as a review of backtesting assumptions, to the MRWG to determine whether OCC's backtesting practices are appropriate for measuring the adequacy of margin requirements. The proposed changes to the Margin Policy state that escalation criteria for backtesting results would include (i) thresholds related to the size and number of exceedances for Model Backtesting of actual portfolios;

(ii) thresholds related to statistical tests for Model Backtesting of hypothetical portfolios; and (iii) thresholds related to the size of an individual Clearing Member's Resource Backtesting deficiency and the coverage rate across all Clearing Members in the aggregate. Further, escalation criteria for backtesting assumptions would include (i) market conditions, (ii) changes to OCC's risk methodologies, and (iii) unusual exceedances.¹⁸ Under the proposed Margin Policy, FRM would prepare and present to MRWG a review of the backtesting assumptions more frequently than monthly in the event of triggers related to high market volatility, low market liquidity, and significant increases or decreases in position size or concentration risk.

The amended Margin Policy would provide that, annually, QRM will present to MRWG a backtesting framework evaluation, including QRM's recommendations regarding whether OCC should change any of its assumptions or exceedance escalation criteria. The Margin Policy would require that changes to the escalation criteria must be approved by the governing body to which the escalation must be made. That is, the MRWG would be authorized to approve changes to the criteria for escalation to the MRWG, and the MC would be authorized to approve changes to the escalation criteria to the MC. The MRWG also would be responsible for determining whether to escalate any changes to backtesting assumptions or the escalation criteria to the MC or RC for consideration. On an annual basis, the MC would report to the RC the results of the annual Backtesting Framework evaluation, including any changes it believes should be made to OCC's backtesting assumptions or the escalation criteria to the RC. The RC would be authorized to approve such assumption changes and escalation criteria to the RC for implementation, as proposed in the Margin Policy.

C. Establishing the Resource Backtesting Margin Charge

In addition to the Model Backtesting and Resource Backtesting amendments described above, OCC proposes to implement a margin add-on charge to help ensure it has sufficient financial resources as a method of managing its credit risk exposure. OCC determined that the proposed Resource Backtesting would identify deficiencies showing whether its Clearing Members fall below

¹⁵ Notwithstanding the inclusion of such collateral in Resource Backtesting rather than in Model Backtesting, OCC also would have the authority under the proposed Margin Policy to maintain variations of Model Backtesting for diagnostic or informational purposes that include such add-ons. See Notice of Filing, 89 FR at 61214.

¹⁶ Although the type of assumptions would be listed in the Margin Policy, OCC would maintain the specific assumptions in its underlying documentation.

¹⁷ The monthly reviews are part of the current backtesting framework, as described in Section II.A. above. The Proposed Rule Change does not seek to change this monthly cadence.

¹⁸ OCC's internal procedures would include further detail regarding escalation criteria for backtesting results and assumptions.

the 99 percent coverage threshold described above.¹⁹ To address such deficiencies, OCC proposes to adopt a new margin charge to increase the likelihood that OCC's margin resources would be sufficient to cover fully its potential future exposure to each participant.²⁰

To implement the Resource Backtesting Margin Charge, OCC proposes to add subsection (h) to its Rule 601 and amend its Margin Policy.²¹ Under the Proposed Rule Change, Rule 601(h)(1) would provide that OCC may require a Clearing Member to deposit additional margin assets to mitigate OCC's exposures that may not otherwise be covered by calculated margin requirements in accordance with Rule 601 and OCC's policies and procedures. Additionally, Rule 601(h)(1) would state that OCC may assess this charge as part of a Clearing Member's daily margin requirement, as needed, to enable OCC to achieve its Resource Backtesting coverage rate. As proposed, Rule 601(h)(1) would state that this add-on may apply to Clearing Members that have a 12-month trailing Resource Backtesting coverage rate below OCC's 99 percent backtesting coverage target.

Rule 601(h)(2) would provide that, generally, the Resource Backtesting Margin Charge will be equal to the third-largest Resource Backtesting deficiency during the previous 12 months, rounded up to the nearest \$1,000. Rule 601(h)(2) also would grant OCC the discretion to adjust the Resource Backtesting Margin Charge if it determines that circumstances particular to a Clearing Member's clearance and settlement activity and/or market volatility warrant a different approach to determining or applying such charge in a manner consistent with achieving OCC's Resource Backtesting coverage target.

Under proposed Rule 601(h)(3), in calculating a Clearing Member's

Resource Backtesting coverage for purposes of the Resource Backtesting Margin Charge and in calculating the third-largest Resource Backtesting deficiency, OCC will not include amounts already collected as a Resource Backtesting Margin Charge from that Clearing Member.

Lastly, under the proposal, Rule 601(h)(4) would provide that for the purposes of this rule, "Resource Backtesting" means backtesting pursuant to OCC's policies and procedures that is designed to evaluate, with a high degree of confidence, whether OCC maintains sufficient financial resources to cover its credit exposure to the liquidation portfolio of each Clearing Member from the last margin collection until the end of the liquidation horizon following the Clearing Member's default.

In addition to new Rule 601(h), OCC proposes amendments to its Margin Policy governing how the Resource Backtesting Margin Charge would be applied, calculated and, in certain circumstances, adjusted. OCC states that the Resource Backtesting Margin Charge would apply to any Clearing Member whose 12-month trailing Resource Backtesting falls below the 99 percent coverage target, using three or more confirmed Resource Backtesting deficiencies over the previous 12 months.²² At least once per month, and more often in circumstances described below, OCC would review and determine which Clearing Member may be subject to the Resource Backtesting Margin Charge, or which Clearing Member's existing Resource Backtesting Margin Charge is subject to change, based on the trailing 12-month Resource Backtesting coverage rate. The Resource Backtesting Margin Charge would be applied daily to the accounts of Clearing Members that contributed to the deficiencies. If in the subsequent month an affected Clearing Member's trailing 12-month coverage rises above 99 percent, the Resource Backtesting Margin Charge would be removed.

The Resource Backtesting Margin Charge would be calculated as the equivalent of a member's third largest Resource Backtesting deficiency in the rolling 12-month lookback period rounded up to the nearest \$1,000, subject to adjustment described below. The Resource Backtesting Margin Charge generally would be allocated proportionally to the Clearing Member's accounts contributing to the third-largest Resource Backtesting deficiency, with the goal of restoring the Clearing Member's margin coverage to the 99

percent target. If applying and allocating the Margin Resource Backtesting Margin Charge would not bring the Clearing Member above this coverage target based on the third largest deficiency,²³ the proposed rules would allow OCC to increase the add-on for a particular account in an amount necessary to meet the coverage target. For purposes of application, calculation, or adjustment, OCC would not take into account any Resource Backtesting Margin Charge(s) already in effect, but would take into account the number and size of deficiencies subsequent to the Resource Backtesting Margin Charge(s) already applied.²⁴

OCC proposes to amend the Margin Policy further to outline the governance around the calculation of and adjustment to the Resource Backtesting Margin Charge, as defined in proposed Rule 601(h)(2). As proposed, the Margin Policy would require FRM to review the Resource Backtesting results at least monthly²⁵ to determine whether a Clearing Member should be assessed a Resource Backtesting Margin Charge and, if so, the amount of the add-on. Imposing a Resource Backtesting Margin Charge on a Clearing Member would require an FRM Officer's approval, which the FRM Officer would grant unless an adjustment to the charge is necessary. Any adjustment to increase the charge would require approval by an FRM Officer, while any adjustment to reduce the charge would require escalation to and approval by the MRWG.²⁶ Under the Proposed Rule Change, the MRWG may authorize such adjustment under certain circumstances, including, but not limited to, differences in magnitude of the deficiencies observed over the last 12-month period, variability in the Clearing Member's

²³ This may occur when the account driving the third largest deficiency, such as a customer account, is experiencing losses that cannot be offset by funds in a different type of account, such as a firm account. See Notice of Filing, 89 FR at 61218, n. 55 and accompanying text.

²⁴ See Notice of Filing, 89 FR at 61217. Additionally, OCC would test the sufficiency of the Resource Backtesting Margin Charge against a Resource Backtesting variant that includes that charge as a financial resource for purposes of: (i) confirming that the charge, as allocated proportionally to the accounts contributing to the third-largest Resource Backtesting deficiency, would be sufficient to achieve the 99 percent coverage target, and (ii) increasing the Resource Backtesting Margin Charge for a particular account that may be contributing a proportionally greater amount to other Resource Backtesting deficiencies if the coverage target is not met. *Id.*, at 61218–19.

²⁵ This review and determination would be conducted at least monthly but could be done on an intramonth basis based on the daily backtesting results reviewed by FRM.

²⁶ Such adjustments are distinct from the routine process of setting the charge on a monthly basis.

¹⁹ See Notice of Filing, 89 FR at 61217.

²⁰ "[. . .] Based on 2023 historical data, approximately 25% of Clearing Members would have fallen below the Resource Backtesting coverage target.)

²¹ OCC represented that the Resource Backtesting Margin Charge is modeled on the implementation of similar add-ons by other clearing agencies to collect additional financial resources when a Clearing Member's margin coverage falls below the agency's coverage target. See Notice of Filing, 89 FR at 61217, citing Securities Exchange Act Release No. 79167 (Oct. 26, 2016), 81 FR 75883, 75884 (Nov. 1, 2016) (SR-FICC-2016-006; SR-NSCC-2016-004).

²² Implementation of the proposed charge would also require revisions to OCC's internal documentation, including the Backtesting Procedure and associated technical document, which OCC provided as confidential Exhibits 3B and 3C, respectively, to File No. SR-OCC-2024-009.

²³ See Notice of Filing, 89 FR at 61217–18.

activity since the observed deficiencies, cyclicalities of observed deficiencies, and/or market volatility. Under the Proposed Rule Change, if OCC implements changes to its margin methodology that affect Clearing Members' margin requirements, FRM would reevaluate Resource Backtesting coverage within the 12-month lookback period based on the margin resources OCC would have collected under the revised methodology to determine whether a Resource Backtesting Margin Charge for a particular Clearing Member is required and, if so, in what amount.²⁷

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.²⁸ Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."²⁹

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,³⁰ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.³¹ Moreover, "unquestioning reliance" on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.³²

After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange

Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act,³³ and Rules 17Ad-22(e)(6),³⁴ 17Ad-22(e)(4),³⁵ and 17Ad-22(e)(2)³⁶ thereunder, as described below.

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.³⁷ Based on its review of the record, and for the reasons described below, the changes described above are consistent with assuring the safeguarding of securities and funds which are in OCC's custody or control or for which it is responsible.

As discussed above, OCC's backtesting framework is used, in part, to monitor whether STANS-calculated margin requirements are adequate, as well as to evaluate the adequacy of credit risk assessment procedures. As described above, OCC proposes to improve its current backtesting by, among other things, clearly defining terms and parameters. However, the current backtesting focuses on the identification of technical or model-related issues, rather than on the sufficiency of OCC's resources to cover its credit exposure during a Clearing Member's default.

To address the gap in its current backtesting, OCC proposes to implement a new category of backtesting, Resource Backtesting, that would measure whether OCC maintains sufficient financial resources to cover its credit exposure to the liquidation portfolio of each Clearing Member from the last deposit of margin assets until the end of the liquidation horizon following the Clearing Member's default. Based on the information OCC provided to the Commission,³⁸ the proposed Resource Backtesting would reveal that OCC does not always meet its coverage target at the member level.

To address the gap in coverage, which suggests OCC may not be holding sufficient margin collateral, OCC also proposes to implement a new margin add-on, the Resource Backtesting Margin Charge, that is designed to

increase the likelihood that OCC collects margin sufficient to cover its potential future exposure to each participant in the interval between the last margin collection and the close-out of positions following a participant default. Working in tandem, the proposed backtesting category and add-on would support OCC's efforts to collect sufficient margin resources to maintain a 99 percent coverage.

Improving OCC's current backtesting processes as well as adoption of the proposed Resource Backtesting and Resource Backtesting Margin Charge add-on would increase the likelihood that OCC collects sufficient margin collateral to mitigate OCC's credit exposure to a Clearing Member default. Increasing the likelihood that OCC collects sufficient margin collateral to address a member default would, in turn, assure the safeguarding of non-defaulting Clearing Members' collateral by reducing the likelihood that OCC would be forced to charge losses to the Clearing Fund.

Accordingly, the changes proposed to the backtesting framework are consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.³⁹

B. Consistency With Rule 17Ad-22(e)(6)(vi)(A) Under the Exchange Act

Rule 17Ad-22(e)(6)(vi)(A) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum is monitored by management on an ongoing basis and regularly reviewed, tested, and verified by conducting backtests of its margin model at least once each day using standard predetermined parameters and assumptions.⁴⁰ In adopting Rule 17Ad-22(e)(6), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures for margin, including whether the covered clearing agency analyzes and monitors its model performance and overall margin coverage by conducting rigorous daily backtesting and at least monthly, and more frequent when appropriate, sensitivity analysis; as well as whether, in conducting sensitivity analysis of the model's coverage, the covered clearing agency has taken into account a wide

²⁷ OCC stated that such a reevaluation is designed to avoid double-margining Clearing Members if and/or when OCC would begin to collect additional margin resources after a margin methodology change. See Notice of Filing, 89 FR at 61219.

²⁸ 15 U.S.C. 78s(b)(2)(C).

²⁹ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

³⁰ *Id.*

³¹ *Id.*

³² *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017) ("Susquehanna").

³³ 15 U.S.C. 78q-1(b)(3)(F).

³⁴ 17 CFR 240.17Ad-22(e)(6).

³⁵ 17 CFR 240.17Ad-22(e)(4).

³⁶ 17 CFR 240.17Ad-22(e)(2).

³⁷ 15 U.S.C. 78q-1(b)(3)(F).

³⁸ OCC provided impact data as confidential Exhibit 3A to File No. SR-OCC-2024-009.

³⁹ *Id.*

⁴⁰ 17 CFR 240.17Ad-22(e)(6)(vi)(A).

range of parameters and assumptions that reflect possible market conditions.⁴¹

As described above, OCC's Proposed Rule Change is designed to improve the level of detail about the material aspects of OCC's backtesting framework included in the overall framework, including how OCC establishes and modifies its assumptions for backtesting. OCC's proposal also is designed to establish a process for assessing the adequacy of OCC's margin resources to cover its credit exposure at the Clearing Member level, and would detail the assumptions underlying OCC's margin backtesting framework and the process for reviewing and modifying those assumptions.

As described above, OCC proposes to codify in the framework its current backtesting procedures, including incorporating definitions, detailing coverage level measurements of actual and hypothetical portfolios, and establishing which types of collateral would be reviewed. Further, OCC's proposal would consolidate its current backtests under one heading (Model Backtesting) that would be governed by a single set of rules and internal procedures. The proposed revisions would improve clarity and consistency across OCC's current backtesting framework. Likewise, OCC proposes adding to the framework a new category of backtesting, Resource Backtesting, as well as related definitions and descriptions of material aspects of how this new resource sufficiency measurement would apply at a Clearing Member level. The proposed rules would also address how OCC would consider different types of accounts and liens when netting, and would provide OCC with more accurate insights into the collected margin levels of its Clearing Members, that could, in turn, affect OCC's credit exposures. OCC's proposal to specifically list the assumptions on which Model Backtesting and Resource Backtesting would rest, and how these assumptions would be reviewed and, if necessary, escalated according to set criteria, would standardize these assumptions and parameters, incorporates the Commission's guidance provided in the adopting release,⁴² and provide OCC's management with clear guidelines to continue its monitoring on an ongoing basis.

Accordingly, the proposed changes to OCC's backtesting framework are consistent with the requirements of Rule 17Ad-22(e)(6)(vi)(A) under the Exchange Act.⁴³

C. Consistency With Rule 17Ad-22(e)(4)(i) Under the Exchange Act

Rule 17Ad-22(e)(4)(i) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.⁴⁴ In adopting Rule 17Ad-22(e)(4), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address credit risk, including whether, if providing central counterparty services, the covered clearing agency has covered its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial resources.⁴⁵

As described above, OCC proposes to adopt the Resource Backtesting Margin Charge to address coverage gaps identified by the proposed Resource Backtesting. The proposed Resource Backtesting Margin Charge would be applied daily based on an at-least monthly assessment of a Clearing Member's 12-month trailing deficiencies to the extent they fall below OCC's 99 percent coverage rate. Collecting additional margin based on such deficiencies would reduce the likelihood of future margin deficiencies for each member. This, in turn, would increase the likelihood that OCC would maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.

Accordingly, the proposed adoption of the Resource Backtesting Margin Charge is consistent with the requirements of Rule 17Ad-22(e)(4)(i) under the Exchange Act.⁴⁶

D. Consistency With Rule 17Ad-22(e)(2)(v) Under the Exchange Act

Rule 17Ad-22(e)(2)(v) under the Exchange Act requires that a covered

clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.⁴⁷

OCC's backtesting framework documentation lacks explicit guidance around the reporting process as well as escalation criteria and thresholds, which could lead to inconsistencies in the escalation of similar backtesting exceedances or deficiencies, and inconsistencies in reviews of backtesting assumptions. The Proposed Rule Change would list the escalation criteria considered during reviews of backtesting results and assumptions and would clearly specify which business units, working groups, and committees would be involved in such reviews, as well as each group's respective authorities and obligations. The Proposed Rule Change also would describe OCC's reporting process and timelines for review of backtesting results, assumptions, and parameters. Adding such detail to OCC's rules would more clearly specify the lines of responsibly governing OCC's backtesting framework.

Accordingly, the proposed changes to further detail OCC's processes for governing its backtesting framework are consistent with the requirements of Rule 17Ad-22(e)(2)(v) under the Exchange Act.⁴⁸

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act⁴⁹ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,⁵⁰ that the proposed rule change (SR-OCC-2024-009), hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21035 Filed 9-16-24; 8:45 am]

BILLING CODE 8011-01-P

⁴⁷ 17 CFR 240.17Ad-22(e)(2)(v).

⁴⁸ *Id.*

⁴⁹ In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁰ 15 U.S.C. 78s(b)(2).

⁵¹ 17 CFR 200.30-3(a)(12).

⁴¹ Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70819 (Oct. 13, 2016) (File No. S7-03-14) ("Standards for Covered Clearing Agencies").

⁴² *Id.*

⁴³ 17 CFR 240.17Ad-22(e)(6)(vi)(A).

⁴⁴ 17 CFR 240.17Ad-22(e)(4)(i).

⁴⁵ See Standards for Covered Clearing Agencies, 81 FR at 70814-15.

⁴⁶ *Id.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2024–2351]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Disclosure of Seat Dimensions To Facilitate the Use of Child Safety Seats on Airplanes During Passenger-Carrying Operations**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves each passenger carrying air carrier operating under the Code of Federal Regulations to post on the internet website of the air carrier the maximum dimensions of a child safety seat that can be used on those aircraft. The information to be collected will be used to facilitate the use of child restraint systems onboard airplanes.

DATES: Written comments should be submitted by November 18, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket:
www.regulations.gov (Enter docket number into search field).

By mail: Sandra L. Ray, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412–239–3063.

FOR FURTHER INFORMATION CONTACT:

Sandra L. Ray by email at: Sandra.ray@faa.gov; phone: 412–546–7344.

SUPPLEMENTARY INFORMATION: *Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0760.

Title: Disclosure of Seat Dimensions to Facilitate the Use of Child Safety Seats on Airplanes During Passenger-Carrying Operations.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: Section 412 of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95) specifically required the Federal Aviation Administration (FAA) to conduct rulemaking “[T]o require each air carrier operating under part 121 of title 14, Code of Federal Regulations to post on the internet website of the air carrier the maximum dimensions of a child safety seat that can be used on each aircraft operated by the air carrier to enable passengers to determine which child safety seats can be used on those aircraft.” As a result, the FAA amended 14 CFR 121.311, which requires passenger carrying air carriers to make available on their websites the width of the widest passenger seat in each class of service for each make, model and series of airplane used in passenger-carrying operations. Section 412 of Public Law 112–95 requires that all air carriers provide this required information on their internet websites. The vast majority of this burden occurred on a one-time basis as air carriers initially provided information on their websites in order to comply with the regulation. After initial implementation, the only time air carriers need to update their websites after initial implementation is when a new airplane make, model, or series is introduced to an air carrier's fleet, or when an air carrier replaces the widest or narrowest seats installed on an existing airplane make, model, or series with wider or narrower seats. The purpose of this collection is to facilitate the use of child restraint systems onboard airplanes by providing greater information to caregivers to help them determine whether a particular child restraint system will fit in an airplane seat.

Respondents: 47 Part 121 Air Carriers.

Frequency: As Required by Regulation.

Estimated Average Burden per Response: Varies per Requirement.

Estimated Total Annual Burden: 348 hours.

Issued in Washington, DC on September 12, 2024.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2024–21089 Filed 9–16–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0158]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Medical Qualification Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to renew an ICR titled, “Medical Qualification Requirements,” due to updated information for several of the Information Collections (ICs) discussed. This ICR is needed to ensure that drivers, motor carriers and the States are complying with the physical qualification requirements of commercial motor vehicle (CMV) drivers. The information collected is used to determine and certify driver medical fitness and must be collected in order for our highways to be safe.

DATES: Comments on this notice must be received on or before November 18, 2024.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2024–0158 using any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. 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:* 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. ET, Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Instructions

All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Public Participation and Request for Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2024-0158), 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-2024-0158/document>, click on this notice, 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.

Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in

the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Background

CMVs (trucks and buses) are longer, heavier, and more difficult to maneuver than automobiles, making them a threat to highway safety if not operated properly by qualified individuals. The public interest in, and right to have, safe highways requires the assurance that drivers of CMVs can safely perform the increased physical and mental demands of their duties. FMCSA's physical qualification standards provide this assurance by requiring drivers to be examined and medically certified as physically and mentally qualified to drive. Therefore, information used to determine and certify driver medical fitness must be collected. FMCSA is the Federal government agency authorized to require the collection of this information. FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce for non-excepted industries (49 U.S.C. 31136(a)(3) and 31502(b)). The regulations discussing this collection are outlined in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 CFR 390 through 399.

Below is a brief description of the included IC activities and how the information is used.

Physical Qualification Standards

The FMCSRs at 49 CFR 391.41 set forth the physical qualification standards that interstate CMV drivers who are subject to part 391 must meet, with the exception of commercial driver's license/commercial learner's permit (CDL/CLP) drivers transporting migrant workers (who must meet the physical qualification standards set forth in 49 CFR 398.3). The FMCSRs covering driver physical qualification records are found at § 391.43, which specify that a medical examination be performed on CMV drivers subject to part 391 who operate in interstate commerce. The results of the examination shall be recorded in accordance with the requirements set forth in that section. The current provisions of §§ 391.51 and 398.3 require that a motor carrier retain the Medical Examiner's Certificate (MEC), Form MCSA-5876, in the driver's qualification (DQ) file for 3 years. The certificate affirms that the driver is physically qualified to drive a CMV in interstate commerce.

Due to potential onset of new conditions or changes in existing conditions that may adversely affect a

driver's ability to safely operate a CMV and/or cause incapacitation that could be a risk to public safety, periodic evaluation and certification is required to assess driver physical qualification. MECs may be issued for up to 2 years after the date of examination. However, drivers with certain medical conditions must be certified more frequently than every 2 years. Medical examiners (MEs) have discretion to certify for shorter time periods on a case-by-case basis for medical conditions that require closer monitoring or that are more likely to change over time. In addition, the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (Pub. L. 109-59, 119 Stat. 1144, August 10, 2005) requires MEs to transmit to FMCSA's Chief Medical Officer, electronically and on a monthly basis, driver information and results of any CMV driver medical examinations conducted during the previous month. MEs are required to maintain records of the CMV driver medical examinations they conduct. FMCSA does not require MEs to maintain these records electronically. However, there is nothing to preclude an ME from maintaining electronic records of the medical examinations they conduct. FMCSA is continuously evaluating new information technology in an attempt to decrease the burden on motor carriers and MEs. Less frequent collection of driver data, Medical Examination Report Forms, MCSA-5875, and MECs, Form MCSA-5876, would compromise FMCSA's ability to determine ME compliance with FMCSA's physical qualification standards and guidelines in performing CMV driver physical qualification examinations, which could result in MEs listed on the National Registry of Certified Medical Examiners who should be removed and possibly drivers that don't meet the physical qualification standards possessing an MEC. Less frequent data collection would also result in decreased validity of the data (*i.e.*, less frequent data submission may increase the error rate due to unintentional omission of examination information). Therefore, less frequent collection of driver examination results is not an option.

Resolution of Medical Conflict

The medical conflict provision provides a mechanism for drivers and motor carriers to request that FMCSA make a final decision to resolve conflicting medical evaluations when either party does not accept the decision of a medical specialist. If two MEs disagree about the medical certification of a driver, the requirements set forth in § 391.47 mandate that the applicant

(driver or motor carrier) submit a copy of a report including results of all medical testing and the opinion of an impartial medical specialist in the field in which the medical conflict arose. The applicant may, if they choose to do so, submit the information above using fax and/or email. FMCSA uses the information collected from the applicant, including medical information, to determine if the driver should or should not be qualified. Without this provision and its incumbent driver medical information collection requirements, an unqualified person may be permitted to drive and qualified persons may be prevented from driving.

Medical Exemptions and Skill Performance Evaluation (SPE) Certificates

FMCSA may, on a case-by-case basis, grant a medical exemption from a physical qualification standard set forth in § 391.41, if the Agency determines the exemption is in the interest of the public and would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation. Individuals with limb impairments are permitted to operate a CMV, but only when they are otherwise qualified and are granted an SPE certificate by FMCSA. Section 381.310 establishes the procedures that persons must follow to request exemptions from the FMCSRs. Without an exemption, individuals who do not meet the requirements in § 391.41 would not be qualified to operate a CMV in interstate commerce. The application process for all medical exemptions currently provides for electronic collection of the application information by FMCSA for those applicants that choose to do so. They are able to fax or scan and email documents to FMCSA. In addition, the SPE Certificate Program maintains a database of application information and the Medical Programs Division maintains a database of application information for hearing and seizure exemptions. FMCSA must collect medical information about the driver's medical condition in order to determine eligibility to receive a medical exemption or an SPE certificate. The Agency requires all medical exemptions be renewed every 2 years to ensure that the granting of the exemption does not diminish safety under § 381.310. Exemption holders are required to submit annual medical information for review to ensure the driver continues to meet the physical qualification requirements. In the interest of highway safety, the medical examination,

medical exemption, and SPE certificate renewal should not be performed less frequently.

The National Registry of Certified Medical Examiners (National Registry)

The National Registry requires MEs who perform physical qualification examinations for interstate CMV drivers to complete training concerning FMCSA's physical qualification standards, pass a certification test, and maintain competence through periodic training and testing, all of which require information collection. ME candidates submit demographic and eligibility data in order to register on the National Registry website to begin the certification process. This data is used to provide the public with contact information for those medical professionals who are certified by FMCSA to perform interstate CMV driver physical qualification examinations. Less frequent collection of ME candidate test results and identity and eligibility information would mean fewer healthcare professionals attempting to become certified which would result in fewer certified MEs being available to the CMV driver and motor carrier population. This could place a huge burden on drivers and motor carriers to find certified MEs to perform their physical qualification examinations. Therefore, less frequent collection of ME candidate test results and identity and eligibility information is not an option. MEs must provide specific driver physical qualification examination information for every driver they examine on driver examination forms required by FMCSA and into the National Registry. Drivers must provide identification and health history information on the driver examination forms required by FMCSA. The purpose for providing this information is to enable the ME to determine if the driver meets the physical qualification standards under § 391.41 and to ensure that there are no disqualifying medical conditions that could adversely affect their safe driving ability or cause incapacitation constituting a risk to the public. If this information were not required, the threat to public safety would be immense and unacceptable.

The National Registry also requires motor carriers to verify the National Registry number of the MEs who certify their drivers and place a note in the DQ file. Less frequent verification of the National Registry numbers by motor carriers would mean drivers may not have been examined by a certified ME listed on the National Registry and they may no longer meet the physical

qualifications standards of the FMCSRs even though they were previously certified as physically qualified.

As a follow-on rule to the National Registry, the final rule titled "Medical Examiner's Certification Integration" (80 FR 22790), modified several of the requirements adopted in the National Registry final rule, some of which had a scheduled compliance date of June 22, 2018. Specifically, it requires (1) FMCSA to electronically transmit from the National Registry to the State Driver's Licensing Agencies (SDLAs) the driver identification information, examination results, and restriction information from examinations performed for holders of CLPs/CDLs (interstate and intrastate); (2) FMCSA to transmit electronically to the SDLAs the medical variance information for all CMV drivers; and (3) SDLAs to post the driver identification, examination results, and restriction information received electronically from FMCSA.

However, as the Medical Examiner's Certification Integration final rule compliance date approached, FMCSA concluded that the information technology infrastructure necessary to implement the portions of the final rule that required the electronic transmission of data would not be available on June 22, 2018. FMCSA extended the compliance two additional times, and that date is now June 23, 2025, for several provisions of the final rule. Since the compliance date for these provisions occurs during this renewal period, the annual burden hours and costs are now being covered as part of this ICR.

Qualifications of Drivers; Diabetes Standard

Under 49 CFR 391.41(b), drivers with a stable insulin regimen and properly controlled Insulin-Treated Diabetes Mellitus (ITDM) are permitted to operate CMVs in interstate commerce. An individual with ITDM is able to obtain an MEC from a certified ME for up to a maximum of 12 months if the (1) Treating Clinician (TC), the healthcare professional who manages and prescribes insulin for the treatment of the individual's diabetes, completes the Insulin-Treated Diabetes Mellitus Assessment Form, MCSA-5870, and attests to the certified ME that the individual maintains a stable insulin regimen and proper control of their diabetes, and (2) the certified ME determines that the individual meets FMCSA's physical qualification standards.

FMCSA allows TCs to provide the Insulin-Treated Diabetes Mellitus Assessment Form, MCSA-5870, to the

certified MEs, if the TCs choose to do so, using electronic communication such as fax or email. Consistent with OMB's commitment to minimizing respondents' recordkeeping and paperwork burdens, and the increased use of secure electronic modes of communication, the Agency anticipates that approximately 25 percent of the forms will be transmitted electronically.

Qualifications of Drivers; Vision Standard

Under 49 CFR 391.41(b), drivers who do not satisfy, with the worse eye, either FMCSA's existing distant visual acuity standard with corrective lenses or the field of vision standard, or both, in § 391.41(b)(10) are permitted to be physically qualified to operate a CMV in interstate commerce under specified conditions. The alternative vision standard adopted in the final rule uses a collaborative process for physical qualification. Before an individual may be medically certified under the alternative vision standard, the individual must have a vision evaluation conducted by an ophthalmologist or optometrist. The ophthalmologist or optometrist records the findings and provides specific medical opinions on the Vision Evaluation Report, Form MCSA-5871. Then, an ME performs an examination, considers the information provided on the Vision Evaluation Report, Form MCSA-5871, and determines whether the individual meets the alternative vision standard, as well as FMCSA's other physical qualification standards. If the ME determines the individual meets the physical qualification standards, the ME may issue an MEC for up to 12 months.

FMCSA allows ophthalmologists and optometrists to provide the Vision Evaluation Report, Form MCSA-5871, to the certified MEs, if they choose to do so, using electronic communication such as fax or email. Consistent with OMB's commitment to minimizing respondents' recordkeeping and paperwork burdens, and the increased use of secure electronic modes of communication, the Agency anticipates that approximately 25 percent of the forms will be transmitted electronically.

Title: Medical Qualification Requirements.

OMB Control Number: 2126-0006.

Type of Request: Renewal of a currently approved collection.

Respondents: Commercial motor vehicle drivers, motor carriers, medical examiners, testing centers.

Estimated Number of Respondents: 8,123,976.

Expiration Date: March 31, 2025.

Estimated Total Annual Burden: 3,243,525 hours.

This information collection is comprised of the following seven information collection activities.

Physical Qualification Standards:

2,776,978 annual burden hours.

7,175,796 annual respondents.

Resolution of Medical Conflict:

11 annual burden hours.

3 annual respondents.

Medical Exemptions:

293 annual burden hours.

1,176 annual respondents.

SPE Certificate Program:

2,808 annual burden hours.

2,567 annual respondents.

National Registry of Certified Medical Examiners:

462,162 annual burden hours.

934,887 annual respondents.

Qualification of Drivers; Diabetes Standard:

654 annual burden hours.

4,906 annual respondents.

Qualification of Drivers; Vision Standard:

619 annual burden hours.

4,641 annual respondents.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2024-21076 Filed 9-16-24; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0143]

Truck Leasing Task Force (TLTF); Notice of Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of public meetings.

SUMMARY: This notice announces two meetings of the TLTF.

DATES: The meetings will be held on Wednesday, October 30 and Thursday, November 20, 2024, from 10 a.m.–4 p.m. ET. Requests for accommodations for a disability must be received by Wednesday, October 23 for the first meeting and by Wednesday, November 13 for the second meeting. Requests to submit written materials for consideration during the meeting must be received no later than Wednesday, October 23 and Wednesday, November 13, respectively.

ADDRESSES: The meetings will be virtual for their entirety. Please register in advance of the meeting at www.fmcsa.dot.gov/tltf. A copy of the agenda for each meeting will be made available at www.fmcsa.dot.gov/tltf 1 week in advance of each meeting. Once approved, copies of the meeting minutes will be available at the website following each meeting. You may visit the TLTF website at www.fmcsa.dot.gov/tltf for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Deputy Designated Federal Officer, TLTF, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360-2925, tltf@dot.gov. Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

Section 23009 of the Bipartisan Infrastructure Law (BIL) (Pub. L. 117-58) requires the Federal Motor Carrier Safety Administration (FMCSA) to establish the TLTF, which was set up in accordance with the Federal Advisory Committee Act (FACA), Pub. L. 92-463 (1972). TLTF will examine the terms, conditions, and equitability of common truck leasing arrangements, particularly as they impact owner-operators and trucking businesses subject to such agreements and submit a report on the task force's identified issues and conclusions regarding truck leasing arrangements, including recommended best practices, to the Secretary, the Secretary of Labor, and the appropriate committees of Congress. TLTF will work in coordination with the United States Department of Labor.

TLTF operates in accordance with FACA under the terms of the TLTF charter, filed February 11, 2022, and amended April 28, 2023, and renewed February 9, 2024.

II. Agendas

October 30, 2024, Meeting

- TLTF will begin consideration of Task 24–5: Drafting a Committee Report on the Equitability of Truck Leasing Agreements and Their Terms and Identifying Best Practices to Assist CMV Drivers in Assessing Leasing Agreement Impacts Before Entering Into Them;
- A presentation on the History of Commercial Motor Vehicle Operations and Safety in the United States, Starting from Single Owner-Operators;
- An update from the Public Court Data Collection Subcommittee on its findings from examining existing case law on truck leasing agreements; and
- A public comment period that will allow drivers and lessees of CMVs to share their personal experiences with leases and present any supporting information they would like to share to assist TLTF in making recommendations on such agreements.

November 20, 2024, Meeting

- TLTF will continue its deliberations on Task 24–5: Drafting a Committee Report on the Equitability of Truck Leasing Agreements and Their Terms and Identifying Best Practices to Assist CMV Drivers in Assessing Leasing Agreement Impacts Before Entering Into Them;
- An update from the Public Court Data Collection Subcommittee on its findings from examining existing case law on truck leasing agreements; and
- A public comment period that will allow drivers and lessees of CMVs to share their personal experiences with leases and present any supporting information they would like to share to assist TLTF in making recommendations on such agreements.

III. Public Participation

The meeting will be open to the public via virtual platform. Advance registration via the website (www.fmcsa.dot.gov/tltf) is required by Wednesday, October 23 for the first meeting and Wednesday, November 13, 2024, for the second meeting.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Wednesday, October 23 for the October 30 meeting and Wednesday, November 13, 2024, for the November 20 meeting.

Oral comments from the public will be heard during the designated comment period at the discretion of the

TLTF chair and Designated Federal Officer. To accommodate as many speakers as possible, the time for each commenter will be limited to 2 minutes. Speakers may submit a written copy of their remarks for inclusion in the meeting records and for circulation to TLTF members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–21106 Filed 9–16–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2024–0012]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Request (ICR) summarized below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collection and its expected burden. On July 9, 2024, FRA published a notice providing a 60-day period for public comment on the ICR. FRA received no comments in response to the notice.

DATES: Interested persons are invited to submit comments on or before October 17, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be sent within 30 days of publication of this notice through www.reginfo.gov/public/do/PRAMain. Find the particular ICR by selecting “Currently under Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: arlette.mussington@dot.gov or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email:

joanne.swafford@dot.gov or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On July 9, 2024, FRA published a 60-day notice in the **Federal Register** soliciting public comment on the ICR for which it is now seeking OMB approval. See 89 FR 56474. FRA has received no comments related to the proposed collection of information.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days’ notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. The 30-day notice informs the regulated community of its opportunity to file relevant comments and affords the agency adequate time to consider public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, each respondent should submit their comment to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA’s estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment.¹

¹ In this 30-day notice, FRA has made a correction to the title of the information collection document. In the published 60-day notice, 89 FR 56474, the title is shown as Inspection Brake Safety Standards for Freight and Other Non-Passenger Trains and equipment (Power Brakes). FRA has corrected the title in this 30-day notice to reflect the currently

OMB Control Number: 2130-0008.

Abstract: Title 49 CFR part 232

prescribes Federal safety standards for freight and other non-passenger train brake systems and equipment. Part 232 contains recordkeeping and information reporting requirements, including requirements relating to the following:

General (subpart A)—procedures for special approvals of alternative standards or test procedures and waivers, and procedures related to the movement of equipment with defective brakes.

General requirements (subpart B)—generally applicable system requirements for the operation of brake systems on complete trains, including braking systems, locomotive brakes, dynamic braking, train handling, and unattended equipment securement.

Inspection and testing requirements (subpart C)—various airbrake test requirements for specific train operating scenarios, including initial terminal tests, intermediate inspections, continuity tests, and extended haul trains. This subpart also has specific rules regarding the use of yard air for conducting the above tests in lieu of locomotives and the use of independent locomotives in double-heading and helper service.

Periodic maintenance and testing requirements (subpart D)—yearly and other periodic testing of individual equipment. This subpart also specifies the equipment and procedures necessary to modify the instructions used to perform these tests.

End-of-train (EOT) devices (subpart E)—design and performance standards of both one-way and two-way EOT devices used on all trains with air brakes. This subpart also includes the inspection and testing requirements for EOT devices.

Introduction of new brake system technology (subpart F)—approval procedures for the introduction of new technologies not already covered by existing regulations, and requirements for the development of a pre-revenue service acceptance testing plan.

Electronically controlled pneumatic (ECP) braking systems (subpart G)—alternate standards for the operation and maintenance of ECP brake systems, particularly where the ECP system is not harmonious with previous standards. This includes interoperability, training, inspection and testing, movement of defective equipment, and periodic maintenance.

Tourist, scenic, historic, and excursion operations (T&H) braking

approved title in the OMB inventory as Brake System Standards for Freight and Other Non-Passenger Trains and Equipment.

systems (subpart H)—regulations that apply specifically to T&H railroads. Those regulations are the same as existed in 2001,² as stated in current 49 CFR 232.1(c).

Overall, the information collection requirements of part 232 serve two important safety purposes. First, the regulations allow FRA to monitor compliance with braking system safety regulations. Second, FRA refers to records regularly maintained under part 232 to assess the effectiveness of the regulations and identify opportunities for improvement.

Type of Request: Extension without change (with changes in estimates) of a currently approved information collection.

Affected Public: Railroads, Association of American Railroads (AAR), and manufacturers.

Form(s): N/A.

Respondent Universe: 784 Railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 4,947,392.

Total Estimated Annual Burden: 324,638 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: \$27,896,141.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Deputy Chief Counsel.

[FR Doc. 2024–21125 Filed 9–16–24; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0122]

Request for Comments on the Renewal of a Previously Approved Collection: Shipbuilding Orderbook and Shipyard Employment

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

² In 2001, appendix B to part 232 was created to preserve part 232 as it existed prior to a 2001 final rule. In 2020, appendix B was moved, with some revisions, to a new subpart H. See 85 FR 80544, Dec. 11, 2020.

collection. The proposed collection OMB 2133–0029 (Shipbuilding Orderbook and Shipyard Employment) is used to provide essential information for reports, services, projects, and database to better understand the current state of the shipyards in the U.S. In compliance with the Merchant Marine Act of 1936, as amended, MARAD conducts this survey to obtain information from the shipbuilding and ship repair industry to be used primarily to determine if an adequate mobilization base exists for national defense and for use in a national emergency. There are no changes to the collection since the last renewal. We are required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

ADDRESSES: Written comments and recommendations for the proposed information collections 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:

Elizabeth Gearhart, 202–366–1867, Office of Shipyards and Marine Engineering (MAR 720), Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Ave SE, Washington, DC 20590, Email: beth.gearhart@dot.gov.

SUPPLEMENTARY INFORMATION: *Title:* Shipbuilding Orderbook and Shipyard Employment.

OMB Control Number: 2133–0029.

Type of Request: Extension of a previously approved information collection.

Abstract: In compliance with 46 U.S.C. 50102 (2007), the Merchant Marine Act of 1936, as amended, MARAD conducts this survey to obtain information from the shipbuilding and ship repair industry to be used primarily to determine if an adequate mobilization base exists for national defense and for use in a national emergency.

Respondents: Owners of U.S. shipyards who agree to complete the requested information.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 200.

Estimated Number of Responses: 200.

Estimated Hours per Response: 0.5.

Annual Estimated Total Annual

Burden Hours: 100.

Frequency of Response: Once Annually.

A 60-day **Federal Register** Notice soliciting comments on this information collection was published on June 13, 2024 (89 FR 50405).

(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. 2024–21104 Filed 9–16–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0077; Notice 2]

Harley-Davidson Motor Company, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA or the Agency), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Harley-Davidson Motor Company (Harley-Davidson) has determined that certain model year (MY) 2018–2019 Harley-Davidson Softail motorcycles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 120, *Tire Selection and Rims and Motor Home/ Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 Pounds)*. Harley-Davidson filed a noncompliance report dated June 20, 2019. Harley-Davidson subsequently petitioned NHTSA, on July 17, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces and explains the denial of Harley-Davidson's petition.

FOR FURTHER INFORMATION CONTACT: Kamna Ralhan, Office of Vehicle Safety Compliance, NHTSA, (202) 366–7236.

SUPPLEMENTARY INFORMATION:

I. Overview

Harley-Davidson has determined that certain MY 2018–2019 Harley-Davidson Softail motorcycles do not fully comply with paragraph S5.3.1 of FMVSS No. 120, *Tire Selection and Rims and Motor Home/ Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds)* (49 CFR 571.120). On June 20, 2019, Harley-Davidson filed a noncompliance report

with NHTSA for the subject motorcycles, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. On July 17, 2019, Harley-Davidson petitioned NHTSA for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301, asserting that the noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Harley-Davidson's petition was published with a 30-day public comment period, on June 12, 2020, in the **Federal Register** (85 FR 35987). NHTSA did not receive any comments on the petition. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number “NHTSA–2019–0077.”

II. Motorcycles Involved

Approximately 12,931 MY 2018–2019 Harley-Davidson Softail FXBB Street Bob and FXLR Low Rider motorcycles, manufactured between June 22, 2017, and June 11, 2019, are potentially involved.

III. Noncompliance

Harley-Davidson explains that the noncompliance is that the subject motorcycles are equipped with a certification label which incorrectly states the recommended cold inflation pressure for the front tires and, therefore, does not fully comply with paragraph S5.3.1 of FMVSS No. 120. Specifically, when a motorcycle's tires are set to the inflation pressure stated on the certification label, the load ratings of the front tires, according to the Tire and Rim Association Year Book (TRA Year Book), are less than the stated front gross axle weight ratings (GAWR) of the motorcycles.

IV. Rule Requirements

Paragraphs S5.1.2 and S5.3.1 of FMVSS No. 120 set forth the relevant requirements for which Harley-Davidson is claiming an inconsequential noncompliance. Pursuant to FMVSS No. 120, S5.1.2, the sum of the maximum load ratings of the tires fitted to an axle shall not be less than the GAWR of the axle system as specified on the vehicle's certification label, which is required by 49 CFR part 567. Additionally, FMVSS No. 120, S5.3.1 requires that the sum of the load ratings of the tires on each axle, based on the tire size designation (not

necessarily for the tires on the vehicle) and the recommended cold inflation pressure for those tires, is appropriate for the GAWR as calculated in accordance with S5.1.2.

V. Summary of Harley-Davidson's Petition

The following views and arguments presented in this section are the views and arguments provided by Harley-Davidson in its petition and do not reflect the views of the Agency.

Harley-Davidson describes the subject noncompliance and states that the noncompliance is inconsequential as it relates to motor vehicle safety. In support of its petition, Harley-Davidson offers the following reasoning:

The front wheel of the FXBB motorcycle is fitted with a Dunlop D401F 100/90–19 57H BW tire as original equipment. The model has a GAWR of 450 lbs., but when a motorcycle owner inflates the tire to the recommended inflation level that is shown on the certification label (*i.e.*, 30 psi), the calculated load rating of the front tire, according to the TRA Year Book, is 386 lbs. Because the FXBB's GAWR is 450 lbs., the tire's load rating at its recommended inflation pressure is 64 lbs. below the required front tire GAWR.

The front wheel of the FXLR motorcycle is fitted with a Michelin Scorchers “31” 100/90B19 62H BW tire as original equipment. The front axle has a GAWR of 450 lbs., but when a motorcycle owner inflates the tire to the recommended inflation level shown on the certification label (*i.e.*, 30 psi), the calculated load rating of the front tire, according to the TRA Year Book, is 443 lbs. Because the FXLR's GAWR is 450 lbs., the tire's load rating at its recommended inflation pressure is 7 lbs. below the required front tire GAWR.

Harley-Davidson cites NHTSA as explaining that the GAWR “formalizes the decision each manufacturer makes about the load-bearing ability of the tires, rims, axle, brakes, and suspension components (at a minimum) chosen to support and control the loaded vehicle.” See 42 FR 7140 (February 7, 1977). FMVSS No. 120, S5.3.1 seeks to ensure that the combination of the tire size designation and the recommended cold inflation pressure can support and control the loaded vehicle.

In its views, despite the load rating of the tires at the recommended inflation pressure falling below the GAWR, Harley-Davidson contends that the noncompliant tires were designed to carry a greater load than specified. Harley-Davidson supports its position by submitting test results conducted by

its respective tire manufacturers (Michelin and Dunlop) to confirm that the subject tires could be safely operated on the motorcycles at 30 psi to support the required GAWR of 450 lbs. Accordingly, Harley-Davidson believes the noncompliance is inconsequential to motor vehicle safety.

For the Dunlop tire, Harley-Davidson commissioned an endurance test that tracks the testing conditions in FMVSS No. 119, S7.2 and Table III. Tires for the test were set to the recommended tire pressure of 41 psi. The test simulated the three phases of the endurance test detailed in Table III of FMVSS No. 119—beginning with maximum sidewall load and increasing the load at each phase. The test also added a fourth, extended phase that tested the tire at the recommended tire pressure of 30 psi. The phases break down as follows:

- *Phase 1:* 100% maximum sidewall load (507 lbs.) for 4 hours totaling 200 miles;
- *Phase 2:* 108% maximum sidewall load (549 lbs.) for 6 hours totaling 300 miles;
- *Phase 3:* 117% maximum sidewall load (594 lbs.) for 24 hours totaling 1,200 miles; and
- *Phase 4:* 125% of the gross axle load (495 lbs., derived by applying the 0.88 correction factor under the FMVSS No. 119 test procedure) for 8,300 miles at 30 psi.

In total, the four-phase endurance test ran the tire for 10,000 total miles at loads above the stated GAWR of the motorcycles. The tire passed all four phases of the endurance test. Based on the endurance test results—including the worst-case scenario of Phase 4—the load carrying capacity of the Dunlop tire at 30 psi would adequately support a GAWR of 450 lbs.

For the Michelin Scorcher tire, which is the original fitment for the FXLR model and optional/replacement fitment for the FXBB model, Harley-Davidson worked with Michelin to confirm that the Scorcher “31” could be operated safely at a recommended tire pressure of 30 psi on both of these models when loaded to the full GAWR of 450 lbs. Michelin confirmed the performance of the tires through a high-speed test on a smooth drum by inflating the tire to 30 psi, applying a load of 450 lbs., and running the tire at a maximum speed of 130 mph. Based on its testing, Michelin provided Harley-Davidson with letters certifying that the tire would adequately support a GAWR of 450 lbs.

Harley-Davidson adds that the above-referenced Dunlop and Michelin tires are the only fitments specified as original or replacement equipment for the two model types of motorcycles.

Based upon this factor and the test results from its tire manufacturers, Harley-Davidson concludes that the noncompliance does not expose the riders of the noncompliant motorcycles to a significantly greater risk than the riders of compliant motorcycles. While the recommended inflation pressure of 30 psi would reduce the tire’s load rating as stated in the TRA Year Book, the tire’s actual load carrying capacity is sufficient to allow the motorcycles to be safely operated at the full GAWR of 450 lbs. Accordingly, Harley-Davidson believes that the difference is inconsequential to motor vehicle safety. Harley-Davidson also notes that NHTSA has previously granted a petition for inconsequential noncompliance where the recommended cold inflation pressure on the certification label was below the appropriate “GAWR as calculated in accordance with S5.1.2.” See 55 FR 49365 (November 27, 1990).

Harley-Davidson concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA’s Analysis

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.¹ In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.²

¹ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

² See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it “results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some

Harley-Davidson explains the noncompliance is that, at the stated cold tire inflation front tire pressure listed on the vehicle’s certification label, the load rating (according to the Tire and Rim Association yearbook) may be less than the stated vehicle’s front GAWRs, and therefore may not comply with FMVSS No. 120, S5.3.1. Furthermore, Harley-Davidson asserts that although the certification label indicates an inflation pressure for the forward axle/wheel of 30 psi, the operator is not at a significantly greater safety risk than if the front tire/wheel were inflated to the “correct” inflation pressure that is required to achieve the vehicle’s stated GAWR. Harley-Davidson enlisted both tire manufacturers that it utilizes to outfit its motorcycles to conduct additional tire testing to verify that its claims are correct.

For the Dunlop brand tire used on Harley-Davidson’s FXBB model motorcycles, Harley-Davidson commissioned the manufacturer to perform the endurance test of FMVSS No. 119, S7.2 and Table III consisting of four phases of various test loading conditions, tire pressures and testing miles. Phases 1 through 3 were run for a combined total of 34 hours and 1,700 miles as well as with load up to 125 percent greater than the maximum sidewall load. While for the fourth phase test, Dunlop ran the test at a load of 125% of the GAWR (495 lbs.—derived by applying the 0.88 correction factor under the FMVSS No. 119 test procedures) for a total of 8,300 miles and at 30 psi.

The Michelin tires used by Harley-Davidson (original fitment on the “FXLR” model and optional/replacement fitment on the FXBB model) were also tested by Michelin on a smooth high-speed drum. The tire was inflated to 30 psi, run at 130 mph with an applied load of 450 lbs. This high-speed test resulted in a duration of 77 minutes and equated to a distance of 208 kilometers or 129 miles. Based upon these tests, Michelin certified that the tires would adequately support a GAWR of 450 lbs.

The supplemental tire testing conducted by the tire manufacturers utilized by Harley-Davidson on the subject motorcycles is significant and does help NHTSA understand the tire’s potential durability at initial sale. However, these wheel dynamometer tests and live on-road usage over the entire useful life of the tires are not interchangeable. The nuances of a dynamic load on a tire combined with

such hazards, in this case fires, can definitely be expected to occur in the future”).

varying road conditions, weather and driver reactions/abilities is not representative of the laboratory tests commissioned by Harley-Davidson. In addition, the reductions in tire pressure and load-carrying capacities for the given labeling error are significant. At a tire pressure of 30 psi for Dunlop 100/90–19 57H tire, there is a 26.8% reduction in the required recommended tire pressure of 41 psi, and the load-carrying capacity reductions range up to 17% compared to the GAWR of the vehicle. Also, the 2023 TRA book suggests that the load-carrying capacity of the Dunlop tire (100/90–19 57H) at the recommended tire pressure of 35 psi should be able to withstand 450 lb, which is a 14.3% difference in the tire pressure. That being said, if the Dunlop tire can hold up to 450 lb then the recommended tire pressure on the certification label should be 35 psi instead of 30 psi. This 5 psi change is significant because it reduces the tire's load carrying capacity by 64 lb which is a 17% reduction. In avoiding certain crashes, even the slightest change in tire pressure effects vehicle safety. If the recommended tire pressure on the certification label is 30 psi then the GAWR should be 386 lb.

Furthermore, three out of four of the laboratory endurance tests performed to FMVSS No. 119, S7.2 and Table III conducted by Dunlop, were set to a recommended tire pressure of 41 psi and not 30 psi. Only one endurance test performed by Dunlop was conducted at 30 psi—representing the pressure the tires would likely experience on-road. However, during this test, despite using loading ranging from 11.7% to 28.2% greater than the GAWR of the vehicle and conducted for 10,000 miles, these conditions are well below the expected tread life of the tires. This factor is heightened given that additional tire pressure losses are expected during normal use of the vehicle will reduce the load carrying capacity of a tires as the inflation pressure decreases from 30 psi. At these pressures, the loading can cause premature tire wear and possible failures.

Consequently, NHTSA disagrees with Harley-Davidson's conclusion that the subject noncompliant certification label is inconsequential to motor vehicle safety. Without additional notification and/or follow-up, it is reasonable to assume motorcycle operators may simply observe and fill their tires to the significantly less safe cold tire pressure displayed on the incorrect motorcycle's certification label. Combined with the lack of real world testing, owner-operators of the subject Harley-Davidson motorcycles may be considered to be at

increased risk of increased bodily harm than those owner-operators which receive a unit with the correct compliant certification label.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that Harley-Davidson has not met its burden of persuasion that the subject FMVSS No. 120 noncompliance is inconsequential to motor vehicle safety. Accordingly, Harley-Davidson's petition is hereby denied and Harley-Davidson is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Eileen Sullivan,

Associate Administrator for Enforcement.

[FR Doc. 2024–21065 Filed 9–16–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2024–0047; Notice 1]

Volkswagen Group of America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Volkswagen Group of America, Inc. (Volkswagen) has determined that certain model year (MY) 2019–2024 Volkswagen and Audi motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*. Volkswagen filed a noncompliance report dated April 10, 2024, and subsequently petitioned NHTSA (the “Agency”) on May 3, 2024, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Volkswagen's petition.

DATES: Send comments on or before October 17, 2024.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to https://www.regulations.gov, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at https://www.regulations.gov by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT:

Syed Rahaman, General Engineer,
NHTSA, Office of Vehicle Safety
Compliance, (202) 366–1704.

SUPPLEMENTARY INFORMATION:

I. Overview: Volkswagen determined that certain MY 2019–2024 Volkswagen and Audi motor vehicles do not fully comply with paragraph S4.5.1(f)(2)(vii) of FMVSS No. 208, *Occupant Crash Protection* (49 CFR 571.208).

Volkswagen filed a noncompliance report dated April 10, 2024, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Volkswagen petitioned NHTSA on May 3, 2024, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Volkswagen's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 129,850 of the following Volkswagen and Audi motor vehicles, manufactured between May 21, 2023, and March 9, 2024, were reported by the manufacturer:

- MY 2024 Volkswagen ID4
- MY 2024 Audi Q4 E-TRON SUV
- MY 2024 Audi Q4 E-TRON

SPORTBACK

- MY 2019–2024 Audi Q3

III. Rule Requirements: Paragraph S4.5.1(f)(2)(vii) of FMVSS No. 208 includes the requirements relevant to this petition. Paragraph S4.5.1(f)(2)(vii) requires that the owner's manual provide accurate information on the telltale light, including when the light is illuminated.

IV. Noncompliance: Volkswagen explains that the owner's manual equipped with the subject vehicles does not include an accurate description of the vehicle's air bag system, therefore, the subject vehicles do not comply with paragraph S4.5.1(f)(2)(vii) of FMVSS No. 208. Specifically, the description of the "Passenger Airbag On" telltale light provides an inaccurate length of time that the "Passenger Airbag On" telltale is illuminated while the air bag is active.

V. Summary of Volkswagen's Petition: The following views and arguments presented in this section, "V. Summary of Volkswagen's Petition," are the views and arguments provided by

Volkswagen. They have not been evaluated by the Agency and do not reflect the views of the Agency. Volkswagen describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Volkswagen explains that the subject noncompliance pertains to the description of the "Passenger Airbag On" light in the owner's manual, which Volkswagen states is not specifically required by FMVSS No. 208. Although the owner's manual equipped with the subject vehicles inaccurately describes the duration that the "Passenger Airbag On" light remains illuminated while the air bag is active, the air bag system itself functions properly and meets all applicable FMVSSs.

For the affected Audi Q3 models, the owner's manual indicates that the "Passenger Airbag On" light will remain illuminated permanently when the air bag is on, whereas it actually extinguishes after 60 seconds. For the affected Q4 e-tron, Q4 Sportback e-tron, and ID.4 models, the owner's manual indicates that the light extinguishes after 60 seconds, but it actually remains illuminated permanently while the air bag is on. In both scenarios, Volkswagen says that the air bag itself remains switched on, ready for operation if needed, and is otherwise accurately described in the owner's manual.

Volkswagen believes that the subject noncompliance does not impact motor vehicle safety because the air bag system is operational and accurately described in other respects. The owner's manual includes an explanation of how the system's components function together and how the "Passenger Airbag Off" indicator light functions, as required by FMVSS No. 208. Furthermore, Volkswagen states that the owner's manual explains the main components of the advanced passenger air bag system, describing how the components function together and covering the basic requirements for proper operation, along with other important relevant safety information.

Volkswagen references a previous petition for a similar issue in Volkswagen Taos, Golf, ID.4, and Audi A3 motor vehicles that NHTSA granted, deeming the inaccurate owner's manual description inconsequential to motor vehicle safety.¹ Volkswagen says NHTSA concluded that if the air bag is inactive, the "Passenger Airbag Off" indicator would remain illuminated and

provide clear communication to vehicle occupants.

Volkswagen states that it has corrected the subject noncompliance in unsold vehicles and updated the owner's manuals via a supplemental page. Volkswagen believes that the subject noncompliance is inconsequential to motor vehicle safety because the front passenger air bag system works as designed, and the only potential noncompliance is the inaccurate information in the owner's manual about the duration of the "Passenger Airbag On" light, which Volkswagen submits is neither required nor regulated by FMVSS No. 208. Volkswagen reports no accidents or injuries related to this issue and one customer inquiry.

Volkswagen concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2024–21066 Filed 9–16–24; 8:45 am]

BILLING CODE 4910–59–P

¹ See Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 88 FR 32274 (May 19, 2023).

DEPARTMENT OF THE TREASURY**Financial Crimes Enforcement Network****Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Purchases of Bank Checks and Drafts, Cashier's Checks, Money Orders, and Traveler's Checks**

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of existing information collection requirements found in Bank Secrecy Act regulations that require financial institutions to maintain records related to the issuance or sale of bank checks and drafts, cashier's checks, money orders, and traveler's checks when the issuance or sale involves the use of currency in an amount between \$3,000 and \$10,000, inclusive. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before November 18, 2024.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2024-0017 and Office of Management and Budget (OMB) control number 1506-0057.

- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2024-0017 and OMB control number 1506-0057.

Please submit comments by one method only. Comments will be reviewed consistent with the Paperwork Reduction Act of 1995 and applicable OMB regulations and guidance. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: FinCEN's Regulatory Support Section at 1-800-767-2825, or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:**I. Statutory and Regulatory Provisions**

The legislative framework generally referred to as the Bank Secrecy Act

(BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act)¹ and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).² The BSA is codified at 12 U.S.C. 1829b, 1951-1960 and 31 U.S.C. 5311-5314, 5316-5336, including notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (Secretary) to, *inter alia*, require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory matters, risk assessments or proceedings, or in the conduct of intelligence or counter-intelligence activities to protect against terrorism, and to implement anti-money laundering/countering the financing of terrorism (AML/CFT) programs and compliance procedures.³ The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.⁴

The BSA prohibits financial institutions from issuing any "bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of \$3,000 or more" unless the individual either (1) has a verified transaction account with the financial institution; or (2) furnishes the financial institution with the information required by regulations and that information is verified and recorded by the financial institution, along with the method of account verification or the information required to be furnished.⁵ To implement these requirements, FinCEN issued a regulation requiring financial institutions to maintain records related

to the issuance or sale of bank checks and drafts, cashier's checks, money orders, and traveler's checks.⁶ The regulation applies to all financial institutions as defined in 31 CFR 1010.100(t). However, as a practical matter banks and money services businesses (MSBs) are the types of financial institutions most likely to issue or sell bank checks and drafts, cashier's checks, money orders, and traveler's checks.^{7,8}

Under 31 CFR 1010.415, financial institutions are required to maintain records of certain information related to the issuance or sale of bank checks and drafts, cashier's checks, money orders, and traveler's checks when the issuance or sale involves currency between \$3,000 and \$10,000, inclusive, to any individual purchaser of one or more of these instruments. Under 31 CFR 1010.415(a)(1)(i), if the purchaser has a deposit account with the financial institution, the financial institution is required to maintain records of: (A) the

⁶ 31 CFR 1010.415. This regulation was originally published in 1990 as 31 CFR 103.29. *See* Amendment to the Bank Secrecy Act Regulations Relating to Identification Required to Purchase Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks, 55 FR 20139 (May 15, 1990). It was modified slightly in 1994. *See* FinCEN, *Amendments to the Bank Secrecy Act Regulations Relating to Identification Required to Purchase Bank Checks and Drafts, Cashier's Checks, Money Orders, and Traveler's Checks*, 59 FR 52250 (Oct. 17, 1994).

⁷ 31 CFR 1010.100(t) defines financial institution to include: banks; brokers or dealers in securities; MSBs, telegraph companies; casinos and card clubs; persons subject to supervision by any state or Federal bank supervisory authority; futures commission merchants, introducing brokers in commodities; and mutual funds. It is FinCEN's assessment that banks and MSBs are the only types of financial institutions as defined under 31 CFR 1010.100(t) that are in the business of issuing or selling bank checks and drafts, cashier's checks, money orders, and traveler's checks.

⁸ 31 CFR 1010.100(ff)(3) defines an MSB that is an issuer or seller of traveler's checks or money orders as a person that issues or sells traveler's checks or money orders in an amount greater than \$1,000 to any person on any day in one or more transactions. FinCEN can estimate the number of principal MSBs that report that they are issuers and/or sellers of money orders or traveler's checks on FinCEN Form 107—Registration of Money Services Businesses (RMSB). However, FinCEN cannot estimate the number of agent MSBs that may be issuers and/or sellers of money orders or traveler's checks. FinCEN assesses that given that an MSB is only defined as an issuer and/or seller of traveler's check if it issues or sells money orders and/or traveler's checks that accumulate to greater than \$1,000 to any one person on any day in one or more transactions that most agent MSBs are less likely to reach the \$1,000 threshold that would warrant compliance with 31 CFR 1010.415. For that reason, the burden estimates to comply with this information collection as described in tables 1 and 2 below only account for principal MSBs that have reported on the RMSB that they are issuers and/or sellers of money orders or traveler's checks. The threshold of between \$3,000 and \$10,000 to comply with 31 CFR 1010.415 makes it even more unlikely that agent MSBs are engaged in such transactions.

¹ USA PATRIOT Act, Public Law 107-56, 115 Stat. 272 (2001).

² The AML Act was enacted as Division F, sections 6001-6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283, 134 Stat. 3388.

³ *See* 31 U.S.C. 5311.

⁴ Treasury Order 180-01 (Jan. 14, 2020); *see also* 31 U.S.C. 310(b)(2)(I) (providing that FinCEN Director "[a]dminister the requirements of subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91-508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary.").

⁵ 31 U.S.C. 5325.

name of the purchaser; (B) the date of purchase; (C) the type(s) of instrument(s) purchased; (D) the serial number(s) of each of the instrument(s) purchased; and (E) the amount in dollars of each of the instrument(s) purchased. Under 31 CFR 1010.415(a)(1)(ii), the financial institution must also verify that the individual is a deposit accountholder or must verify the individual's identity.⁹

Under 31 CFR 1010.415(a)(2)(i), if the purchaser does not have a deposit account with the financial institution, the financial institution must maintain a record of: (A) the name and address of the purchaser; (B) the social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, the alien identification number; (C) the date of birth of the purchaser; (D) the date of the purchase; (E) the type(s) of instrument(s) purchased; (F) the serial number(s) of the instrument(s) purchased; and (G) the amount in dollars of each of the instrument(s) purchased. Under 31 CFR 1010.415(a)(2)(ii), the financial institution must also verify the purchaser's name and address by examination of a document that is normally acceptable as a means of identification when cashing checks for

nondepositors and that contains the name and address of the purchaser, and must also record the specific identifying information.

Under 31 CFR 1010.415(b), financial institutions must treat contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more as one purchase. Multiple purchases during one business day totaling \$3,000 or more must be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred.

Under 31 CFR 1010.415(c), financial institutions must retain all required records for a period of five years and make those records available to the Secretary upon request at any time.

II. Paperwork Reduction Act of 1995 (PRA)¹⁰

Title: Purchases of bank checks and drafts, cashier's checks, money orders, and traveler's checks (31 CFR 1010.415).

OMB Control Number: 1506–0057.

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the recordkeeping requirement for the issuance or sale of bank checks and drafts, cashier's checks, money orders, and traveler's

checks when the issuance or sale involves the use currency in an amount between \$3,000 and 10,000, inclusive.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review: Renewal without change of a currently approved information collection.

Frequency: As required.

Estimated Number of Respondents: 23,207 financial institutions.¹¹

Estimated Recordkeeping Burden:

In Part 1 of this analysis, FinCEN describes the distribution of the estimated number of financial institutions by type affected by the regulatory requirements. In Part 2, FinCEN describes the primary characteristics of the regulatory requirements. In addition, in Part 2, FinCEN proposes for review and comment a renewal of the calculation of the annual PRA burden that includes a scope and methodology similar to that used in the 2021 notice to renew these information collection requirements.¹²

Part 1. Distribution of the Financial Institutions Covered by This Notice

The distribution of financial institutions, by type, covered by this notice is reflected in table 1 below:

TABLE 1—DISTRIBUTION OF FINANCIAL INSTITUTIONS COVERED BY THIS NOTICE, BY TYPE OF FINANCIAL INSTITUTION

Type of financial institution	Number of financial institutions
Banks	10,062
Banks with a Federal functional regulator (FFR)	^a 9,462
Banks lacking an FFR	^b 600
Principal MSBS—Issuers/Sellers of Money Orders/Traveler's Checks ^c	13,145
Principal MSBs—Issuers/Sellers of Money Orders Only	11,764
Principal MSBs—Issuers/Sellers of Money Orders and Traveler's Checks	1,318
Principal MSBs—Issuers/Sellers of Traveler's Checks Only	63
Total	23,207

^a This estimate of the total number of banks with an FFR, including credit unions, is based on end of year 2023 data as provided by each of the FFRs, respectively. The FFRs are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration.

^b This estimate of active entries as of year-end 2023 was derived in consultation with staff from the Internal Revenue Service's Small Business/Self-Employed Division and incorporates data from both public and non-public sources, including: Call Reports; various State banking/financial institution regulators' websites and directories; the Federal Reserve Board of Governors' Master Account and Services database (<https://federalreserve.gov/paymentsystems/master-account-and-services-database-existing-access.htm>); and data from the Commonwealth of Puerto Rico Oficina del Comisionado de Instituciones Financieras (OCIF).

^c This number is derived from data as self-reported by MSBs identified as active at year-end 2023 in FinCEN's publicly available MSB registration database. FinCEN, MSB Registrant Search, available at <https://www.fincen.gov/msb-state-selector> (downloaded Feb. 28, 2024).

⁹ 31 CFR 1010.415(a)(1)(ii) (stating that "[v]erification may be either through a signature card or other file or record at the financial institution provided the deposit accountholder's name and address were verified previously and that information was recorded on the signature card or other file or record; or by examination of a document which is normally acceptable as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser. If the deposit

accountholder's identity has not been verified previously, the financial institution may only verify the deposit accountholder's identity by examination of a document which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors and which contains the name and address of the purchaser, and must also record the specific identifying information (e.g., State of issuance and number of driver's license))."

¹⁰ Public Law 104–13, 109 Stat. 163 (codified at 44 U.S.C. 3506(c)(2)(A)).

¹¹ Table 1 below describes the distribution of the types of financial institutions covered by this notice.

¹² See FinCEN, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Purchases of Bank Checks and Drafts, Cashier's Checks, Money Orders, and Traveler's Checks*, 86 FR 6411 (Jan. 21, 2021).

In connection with a variety of initiatives FinCEN is undertaking to implement the AML Act, FinCEN intends to conduct, in the future, additional assessments of the PRA burden associated with BSA requirements.

Part 2. Annual PRA Burden and Cost

The scope of the annual PRA burden and cost estimates in this renewal encompasses the incremental recordkeeping requirements for FinCEN purposes that are associated with the issuance or sale of bank checks and drafts, cashier's checks, money orders, and traveler's checks between \$3,000

and \$10,000, inclusive. FinCEN continues to assign an estimate of the incremental annual average hourly burden of creating and maintaining records for the issuance or sale of bank checks and drafts, cashier's checks, money orders, or traveler's checks to individual purchasers when the sale involves currency between \$3,000 and \$10,000, inclusive, that is approximately seven and a half hours per covered financial institution, irrespective of the volume of such transactions.¹³ This estimate covers the expected average incremental recordkeeping burden for FinCEN

purposes of (1) verifying the identity of depository accountholder and other customers purchasing bank checks and drafts, cashier's checks, money orders, or traveler's checks when the issuance or sale involves currency between \$3,000 and \$10,000, inclusive; and (2) creating and maintaining records of certain information for a minimum of five years to be made available to the Secretary upon request.¹⁴

FinCEN's estimate of the total annual PRA burden (174,053 hours) includes the recordkeeping requirements being renewed in this notice, detailed in table 2 below:

TABLE 2—DISTRIBUTION OF ESTIMATED TOTAL ANNUAL BURDEN HOURS OF MAINTAINING RECORDKEEPING REQUIREMENTS FOR ISSUANCE/SALE OF BANK CHECKS AND DRAFTS, CASHIER'S CHECKS, MONEY ORDERS, OR TRAVELER'S CHECKS

Affected financial institution type	Number of financial institutions	Average annual burden estimate per financial institution in hours	Total annual burden hours
Banks	10,062	7.5	75,465
Issuers/sellers of money orders	11,764	7.5	88,230
Issuers/sellers of money orders and traveler's checks	1,318	7.5	9,885
Issuers/sellers of travel checks	63	7.5	473
Total annual burden hours			174,053

¹³ FinCEN does not have access to enough of the requisite data to estimate the volume of bank checks and drafts, cashier's checks, money orders, and/or traveler's checks or the typical currency value of the relevant products that are issued or sold by any one covered financial institution in a given year. FinCEN's PRA estimates of the number of affected financial institutions include all identified, active entities in the respective categories of financial institutions that issue or sell the financial instruments covered by this control renewal. However, to the extent that SAR filings related to money orders or traveler's checks might proxy for the number of entities that regularly issue or sell such financial instruments in dollar values that would incur an incremental recordkeeping burden for FinCEN purposes, the number of affected financial institutions is likely two to three orders of magnitude smaller than then number of financial institutions to whom the rule applies. For example, between 2014 and 2023, the number of unique

MSBs that filed SARs related to money orders ranged between a minimum of 1.7 (in 2024) and a maximum of 2.7 (2015) percent of the current estimate of affected MSBs. Over the same time period the number of unique MSBs that filed SARs related to traveler's checks ranged from a minimum of 0.02 (in 2020) to a maximum of 0.09 (in 2016) percent of the population of affected MSBs estimated in table 2. Thus, while certain financial institutions, or types of affected financial institutions, may expect to incur a substantially higher incremental annual burden, FinCEN expects many other financial institutions may not incur any incremental recordkeeping burden at all due to the nature of their business practices. FinCEN therefore continues to assign an estimated average incremental annual hourly burden per financial institutions to comply with this information collection of seven and half hours that reflects this expectation about the distribution of affected financial institutions. FinCEN invites comments

regarding information relevant to the calculation of burden—ideally from sources and collection methods that provide sufficient transparency and reliability for FinCEN to be confident in using that information in its calculations.

¹⁴ This estimated burden, particularly with respect to depository customers of a bank, is intended to be distinct from the burden estimated in connection with a bank's compliance with its ordinary customer identification program (CIP) obligations under 31 CFR 1020.220. FinCEN recently published its burden estimates related to CIP requirements and solicited public comment on those estimates separately. See FinCEN, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Customer Identification Program Regulatory Requirements*, 89 FR 51940 (June 20, 2024).

FinCEN is utilizing the same fully loaded composite hourly wage rate of \$106.30 utilized in the 2024 notices of proposed rulemaking (NPRMs) entitled Customer Identification Programs for Registered Investment Advisers and

Exempt Reporting Companies and Anti-Money Laundering and Countering the Financing of Terrorism Programs, as well as in recent 60-Day Notices to renew OMB control numbers

corresponding to specific BSA regulations.¹⁵

The total estimated cost of the annual PRA burden is \$18,501,833.90, as reflected in table 3 below:

TABLE 3—ESTIMATED TOTAL COST OF ANNUAL PRA BURDEN

Regulatory requirement	Burden hours	Wage rate	Total cost
Verifying and maintaining records	174,053	\$106.30	\$18,501,833.90
Total annual cost .....	.....	.....	18,501,833.90

Estimated Number of Respondents: 23,207, as set out in table 1.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 174,053 hours, as set out in table 2.

Estimated Total Annual Recordkeeping Cost: The estimated total annual PRA cost is \$18,501,833.90, as set out in table 3.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Andrea M. Gacki,
Director, Financial Crimes Enforcement Network.
[FR Doc. 2024–21079 Filed 9–16–24; 8:45 am]
BILLING CODE 4810–02–P

¹⁵ See, e.g., FinCEN and SEC, *NPRM Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers*, 89 FR 44571 (May 21, 2024); FinCEN, *NPRM Anti-Money Laundering and Countering the Financing of Terrorism Programs NPRM*, 89 FR 55428 (July 3,

DEPARTMENT OF THE TREASURY
Internal Revenue Service
Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, October 10, 2024.

FOR FURTHER INFORMATION CONTACT: Ann Tabat at 1–888–912–1227 or (602) 636–9143.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Thursday, October 10, 2024, at 2:30 p.m. eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Ann Tabat. For more information, please contact Ann Tabat at 1–888–912–1227 or (602) 636–9143, or write TAP Office, 4041 N Central Ave., Phoenix, AZ 85012 or contact us at the website: <http://www.improveirs.org>. The agenda will

2024); FinCEN, *Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Customer Identification Program Regulatory Requirements for Certain Financial Institutions*, 89 FR 51940 (June 20, 2024); FinCEN, *Agency Information Collection*

include TAP 2024 committee project focus areas.

Dated: September 9, 2024.
Shawn Collins,
Director, Taxpayer Advocacy Panel.
[FR Doc. 2024–21045 Filed 9–16–24; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY
Internal Revenue Service
Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Wednesday, October 9, 2024.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Wednesday, October 9, 2024, at 11 a.m. eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of

Activities; Proposed Renewal; Comment Request; Renewal Without Change of Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions and for Private Banking Accounts, 89 FR 49273, (June 11, 2024).

intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1-888-912-1227 or 202-317-4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: <http://www.improveirs.org>. The agenda will include TAP 2024 committee project focus areas.

Dated: September 9, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024-21044 Filed 9-16-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Wednesday, October 16, 2024.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1-888-912-1227 or (718) 834-2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, October 16, 2024, at 11 a.m. eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information, please contact Robert Rosalia at 1-888-912-1227 or (718) 834-2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: <http://www.improveirs.org>. The agenda will include TAP 2024 committee project focus areas.

Dated: September 9, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024-21048 Filed 9-16-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, October 10, 2024.

FOR FURTHER INFORMATION CONTACT: Jose Cintron-Santiago at 1-888-912-1227 or 787-522-8607.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, October 10, 2024, at 1 p.m. eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Jose Cintron-Santiago. For more information, please contact Jose Cintron-Santiago at 1-888-912-1227 or 787-522-8607, or write TAP Office, 48 Carr 165 Suite 2000, Guaynabo, PR 00968-8000 or contact us at the website: <http://www.improveirs.org>. The agenda will include TAP 2024 committee project focus areas.

Dated: September 9, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024-21046 Filed 9-16-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Credit for Renewable Electricity Production and Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 2024; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice; correction.

SUMMARY: This document contains corrections to a publication of the inflation adjustment factor and reference price for calendar year 2024 as required by section 45(e)(2)(A) of the Internal Revenue Code that was published in the **Federal Register** on July 11, 2024. The 2024 inflation adjustment factor and reference price are used in determining the availability of the credit for renewable electricity production.

FOR FURTHER INFORMATION CONTACT: Charles Hyde, (202) 317-6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The publication of the inflation adjustment factor and reference price for calendar year 2024 as required by section 45(e)(2)(A) of the Internal Revenue Code (26 U.S.C. 45(e)(2)(A)) that is the subject of this correction is under section 45 of the Internal Revenue Code.

Correction of Publication

Accordingly, FR Doc. 2024-15226, the publication of the inflation adjustment factor and reference price for calendar year 2024 as required by section 45(e)(2)(A) of the Internal Revenue Code (26 U.S.C. 45(e)(2)(A)), appearing on page 56924 in the **Federal Register** on Thursday, July 11, 2024, is corrected as follows:

1. On Page 56925, in the first column, in the second line of the first partial paragraph, the language "2023" is corrected to read "2024".

2. On Page 56925, in the first column, the last sentence of the first full paragraph is removed.

Oluwafunmilayo A. Taylor,

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

[FR Doc. 2024-21015 Filed 9-16-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Taxpayer Advocacy Panel Joint Committee**

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference through the Microsoft Teams Platform.

DATES: The meeting will be held Thursday, October 24, 2024.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1-888-912-1227 or 214-413-6550.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, October 24, 2024, at 3 p.m. eastern time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information, please contact Conchata Holloway at 1-888-912-1227 or 214-413-6550, or write TAP Office, 1114 Commerce St. MC 1005, Dallas, TX 75242 or contact us at the website: <http://www.improveirs.org>.

The agenda will include the potential project referrals from the committees, and discussions on priorities the TAP will focus on for the 2024 year. Public input is welcomed.

Dated: September 9, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024-21049 Filed 9-16-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee**

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free

Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Thursday, October 10, 2024.

FOR FURTHER INFORMATION CONTACT: Kelvin Johnson at 1-888-912-1227 or 504-202-9679.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Thursday, October 10, 2024, at 4 p.m. eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Kelvin Johnson. For more information, please contact Kelvin Johnson at 1-888-912-1227 or 504-202-9679, or write TAP Office, 1555 Poydras Street, Suite 12, New Orleans, LA 70112 or contact us at the website: <http://www.improveirs.org>. The agenda will include TAP 2024 committee project focus areas.

Dated: September 9, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024-21047 Filed 9-16-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee**

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, October 8, 2024.

FOR FURTHER INFORMATION CONTACT:

Matthew O'Sullivan at 1-888-912-1227 or (510) 907-5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements (TAC) Project Committee will be held Tuesday, October 8, 2024, at 3 p.m. eastern time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1-888-912-1227 or (510) 907-5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612-5217 or contact us at the website: <http://www.improveirs.org>. The agenda will include TAP 2024 committee project focus areas.

Dated: September 9, 2024.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2024-21043 Filed 9-16-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0843]

Agency Information Collection Activity Under OMB Review: VHA Homeless Programs—Project CHALENG (Community Homelessness Assessment, Local Education and Networking Groups) for Veterans

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs (VA), will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by October 17, 2024.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: www.reginfo.gov/public/do/PRAMain, select “Currently under Review—Open for Public Comments,” then search the list for the information collection by Title or “OMB Control No. 2900–0843.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202–461–8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: VHA Homeless Programs—Project CHALENG (Community Homelessness Assessment, Local Education and Networking Groups) for Veterans.

OMB Control Number: 2900–0843.
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Revision of a currently approved collection.

Abstract: Department of Veterans Affairs (VA) launched Project CHALENG (Community Homelessness Assessment, Local Education and Networking Groups) for Veterans in 1993 in response to Public Law 102–405, which required VA to make an assessment of the needs of homeless Veterans in coordination with other Federal departments, state and local government agencies, and nongovernmental agencies with experience working with homeless persons. Since 1993, VA has administered a needs assessment in accordance with guidance in Public Law 103–446 and Public Law 105–114. Legal authority for this data collection is found under 38 U.S.C., part I, chapter 5, section 527 that authorizes the collection of data that will allow measurement and evaluation of the Department of Veterans Affairs Programs, the goal of which is improved health care for Veterans.

This collection of information is necessary to ensure that VA and community partners are developing services that are responsive to the needs of local homeless Veterans, in order to end homelessness and prevent new Veterans from experiencing homelessness. Over the years, data from CHALENG has assisted VA in developing new services for Veterans, such as the Homeless Veteran Dental Program (HVDP), the expansion of the Department of Housing and Urban Development—VA Supportive Housing (HUD–VASH) Program, the Veterans Justice Programs and Supportive Services for Veteran Families (SSVF). In addition, community organizations use CHALENG data in grant applications to

support services for homeless Veterans; these grant applications are for VA, other Federal, local government, and community foundation dollars, which maximize community participation in serving homeless Veterans.

This collection will be a renewal of the collection approved in 2021. No revisions have been made to the questions; however, revisions to the burden hours are based upon the number of respondents in the previous year. The collection consists of two survey forms: one for Veterans (VA Form 10–10161) and one for VA staff members, community homeless providers, and interested community members (VA Form 10–10162). The only differences between the two survey forms are the introductory demographic questions; otherwise, the survey is the same for both groups.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 52537, June 24, 2024.

Affected Public: Individuals and Households.

Estimated Annual Burden: Total = 620 hours.

Veteran Survey (VA Form 10–10161): 300 hours.

Provider Survey (VA Form 10–10162): 320 hours.

Estimated Average Burden per Respondent:

Veteran Survey: 6 minutes.

Provider Survey: 6 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 6,200 total.

Veteran Survey: 3,000.

Provider Survey: 3,200.

(Authority: 44 U.S.C. 3501 *et seq.*)

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–19539 Filed 9–16–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0587]

Agency Information Collection Activity: Equipment Operation and Maintenance Manuals

AGENCY: Procurement Policy and Warrant Management Service (PPS),

Office of Procurement Policy, Systems and Oversight, Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Procurement Policy and Warrant Management Service, Office of Procurement Policy, Systems and Oversight, Office of Acquisition and Logistics, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Comments must be received on or before November 18, 2024.

ADDRESSES: Comments must be submitted through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Forrest Browne, 202–632–9677, forrest.browne@va.gov.

VA PRA information: Maribel Aponte, 202–461–8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, PPS invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of PPS’s functions, including whether the information will have practical utility; (2) the accuracy of PPS’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VAAR Clause 852.211–70, Equipment Operation and Maintenance Manuals.

OMB Control Number: 2900–0587.

<https://www.reginfo.gov/public/do/PRASearch> (Once at this link, you can enter the OMB Control Number to find

the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: The contracting officer shall insert the clause at 852.211–70, Equipment Operation and Maintenance Manuals, in solicitations and contracts for technical medical equipment, and other technical and mechanical equipment and devices where the requiring activity determines manuals are a necessary requirement for operation and maintenance of the equipment. Contractors are required to furnish both operation manuals and maintenance/repair manuals with the equipment provided to the Government.

This clause sets forth those requirements and sets forth the minimum standards those manuals must meet to be acceptable. Generally, this is the same operation manual furnished with each piece of equipment sold to the general public and the same repair manual used by company technicians in repairing the company's equipment. The cost of the manuals is included in the contract price or listed as separately priced line items on the purchase order. The operation manual will be used by the individual actually operating the equipment to ensure proper operation and cleaning. The repair manual will be used by VA

equipment repair staff to repair the equipment.

Affected Public: Individuals and households.

Estimated Annual Burden: 745 hours.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 22,337.

Authority: 44 U.S.C. 3501 *et seq.*

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt.), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Species
Status for Kentucky Creekshell and Designation of Critical Habitat;
Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R4-ES-2024-0065;
FXES1111090FEDR-245-FF09E21000]

RIN 1018-BH46

**Endangered and Threatened Wildlife
and Plants; Endangered Species
Status for Kentucky Creekshell and
Designation of Critical Habitat**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Kentucky creekshell (*Leaunio ortmanni* [= *Villosa ortmanni*]), a freshwater mussel species from Kentucky and Tennessee, as an endangered species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the Kentucky creekshell. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the Kentucky creekshell as an endangered species under the Act. Finalizing this rule as proposed would add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. We also propose to designate critical habitat for the Kentucky creekshell under the Act. In total, approximately 545 river miles (877 river kilometers) in Kentucky and Tennessee fall within the boundaries of the proposed critical habitat designation. We also announce the availability of an economic analysis of the proposed designation of critical habitat for the Kentucky creekshell.

DATES: We will accept comments received or postmarked on or before November 18, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 1, 2024.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R4-ES-2024-0065, which is the docket number for this rulemaking.

Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R4-ES-2024-0065, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available on the Service's website at <https://ecos.fws.gov/ecp/species/8209>, at <https://www.regulations.gov> at Docket No. FWS-R4-ES-2024-0065, or both.

FOR FURTHER INFORMATION CONTACT: Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Kentucky Field Office, 330 West Broadway, Room 265, Frankfort, KY 40601; telephone 502-653-0571. 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. Please see Docket No. FWS-R4-ES-2024-0065 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Kentucky creekshell meets the definition of an endangered species; therefore, we are proposing to

list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and making a critical habitat designation can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the Kentucky creekshell as an endangered species under the Act, and we propose designation of approximately 545 stream miles (877 river kilometers) in Kentucky and Tennessee as critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that Kentucky creekshell is endangered due to the following threats: Habitat loss, degradation, and fragmentation (Factor A) resulting from stressors, including dams and other instream barriers, and degraded water quality from development, agriculture, and instream gravel mining. Changes in climate conditions and small population size exacerbate the effects of habitat loss, degradation, and fragmentation (Factor E).

Section 4(a)(3) of the Act requires that the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, concurrently with listing designate critical habitat for the species. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any

other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

- (1) The species' biology, range, and population trends, including:
 - (a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;
 - (b) Genetics and taxonomy;
 - (c) Historical and current range, including distribution patterns and the locations of any additional populations of this species;
 - (d) Historical and current population levels, and current and projected trends; and
 - (e) Past and ongoing conservation measures for the species, its habitat, or both.
- (2) Threats and conservation actions affecting the species, including:
 - (a) Factors that may be affecting the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.
 - (b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species.
 - (c) Existing regulations or conservation actions that may be addressing threats to this species.
- (3) Additional information concerning the historical and current status of this species.
- (4) Specific information on:
 - (a) The amount and distribution of Kentucky creekshell habitat;
 - (b) Any additional areas occurring within the range of the species that should be included in the designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species;
 - (c) Special management considerations or protection that may be needed in critical habitat areas we are

proposing, including managing for the potential effects of climate change; and

(d) Whether areas not occupied at the time of listing qualify as habitat for the species and are essential for the conservation of the species.

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions 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. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send

comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, 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. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is threatened instead of endangered or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On April 20, 2010, the Kentucky creekshell was included in a listing petition from the Center for Biological Diversity (CBD) and others (CBD 2010, entire) requesting that the Service list 404 aquatic, riparian, and wetland species as endangered or threatened under the Act. In 2011, the Service found that this petition presented substantial scientific or commercial information indicating that listing may be warranted for 374 species, including the Kentucky creekshell (76 FR 59836, September 27, 2011). Based on that finding, we conducted a species status assessment (SSA) for the Kentucky creekshell to compile the best scientific and commercial data available regarding the species' biology and any factors influencing its viability. This document constitutes our 12-month finding on the April 20, 2010, petition to list the Kentucky creekshell under the Act.

Peer Review

An SSA team prepared an SSA report for the Kentucky creekshell. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

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 in listing and recovery actions under the Act, we solicited independent scientific review of the information contained in the Kentucky creekshell SSA report. We sent the SSA report to two independent peer reviewers and received one response. Results of this structured peer review process can be found at <https://www.regulations.gov>. In preparing this proposed rule, we incorporated the results of the review, as appropriate, into the SSA report,

which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in Peer Review above, we received comments from one peer reviewer on the draft SSA report. We reviewed all comments we received from the peer reviewer for substantive issues and new information regarding the information contained in the SSA report. The peer reviewer provided additional information and clarification regarding the propagation of Kentucky creekshell. Otherwise, no substantive changes to our analysis and conclusions within the SSA report were deemed necessary, and the peer reviewer's comments are addressed in version 1.0 of the SSA report.

I. Proposed Listing Determination Background

The Kentucky creekshell (*Leaunio ortmanni* [= *Villosa ortmanni*]) is a member of the Class Bivalvia, Order Unionodia, and Family Unionidae (ITIS 2023). It was described by Walker (1925) from specimens collected from the Green River at Mammoth Cave, Edmonson County, Kentucky, and from Sulphur Fork of Russell Creek, Adair County, Kentucky. The Kentucky creekshell was previously placed in the genus *Villosa*, which was a loose amalgam of species generally defined by rayed and elongated shells with weak hinged teeth. None of these characteristics were unique to *Villosa*, and not all species possessed all the characteristics (Watters 2018, p. 4). As a result, the genus was broken into multiple new genera with true *Villosa* being limited to the extreme Southeast with additional nominal taxa being placed into *Paetulunio*, *Cambarunio*, *Leaunio*, and *Sagittunio* (Watters 2018, entire).

While the 2010 CBD petition referred to Kentucky creekshell (*Villosa ortmanni*), the species' taxonomy, common name, and scientific name as *Leaunio ortmanni* have been accepted by the scientific community, as

evidenced by the species' inclusion in A Revised List of the Freshwater Mussels (Mollusca: Bivalvia: Unionida) of the United States and Canada (Williams et al. 2017, p. 45), as well as its inclusion in the Freshwater Mollusk Conservation Society Names Subcommittee list (FMCS 2021). Therefore, this rulemaking action proposes to list the Kentucky creekshell (*Leaunio ortmanni*). A thorough review of the taxonomy, life history, and ecology of the Kentucky creekshell is presented in the SSA report (Version 1.0; Service 2023, pp. 1–63).

Kentucky creekshell adult shells are 2–3 inches in length with a greenish-yellow to tan color with numerous, fine green rays, mostly located on the posterior end of the shell (Watters 2018, p. 42). The species is considered relatively fast-growing and short-lived compared to other mussel species. It occurs in medium-sized rivers to small streams and spring runs. The species can be found in riffles comprised of sand and gravel or found in adjacent depositional areas near shore (Haag and Cicerello 2016, p. 261). Kentucky creekshell most often occurs in suitable habitat influenced by nearby springs due to the preferred habitat of its obligate host fish, the banded sculpin (*Cottus caroliniae*).

The Kentucky creekshell is endemic to the Green River basin. Historically, the species occurred in the Clifty Creek–Rough River, Ugly Creek–Green River, Lower Nolin River, Bays Fork–Barren River, Skaggs Creek, Little Muddy Creek–Barren River, Middle Nolin River, Upper Nolin River, Russell Creek, East Fork Barren River–Barren River, Trammel Creek, Drakes Creek, and Gasper River basins (figure 1). The Kentucky creekshell is presumed extirpated from the historically occupied Lower Nolin River, Bays Fork–Barren River, Skaggs Creek, and Little Muddy Creek–Barren River basins, with no observations of the species since 1973 (a 50-year absence).

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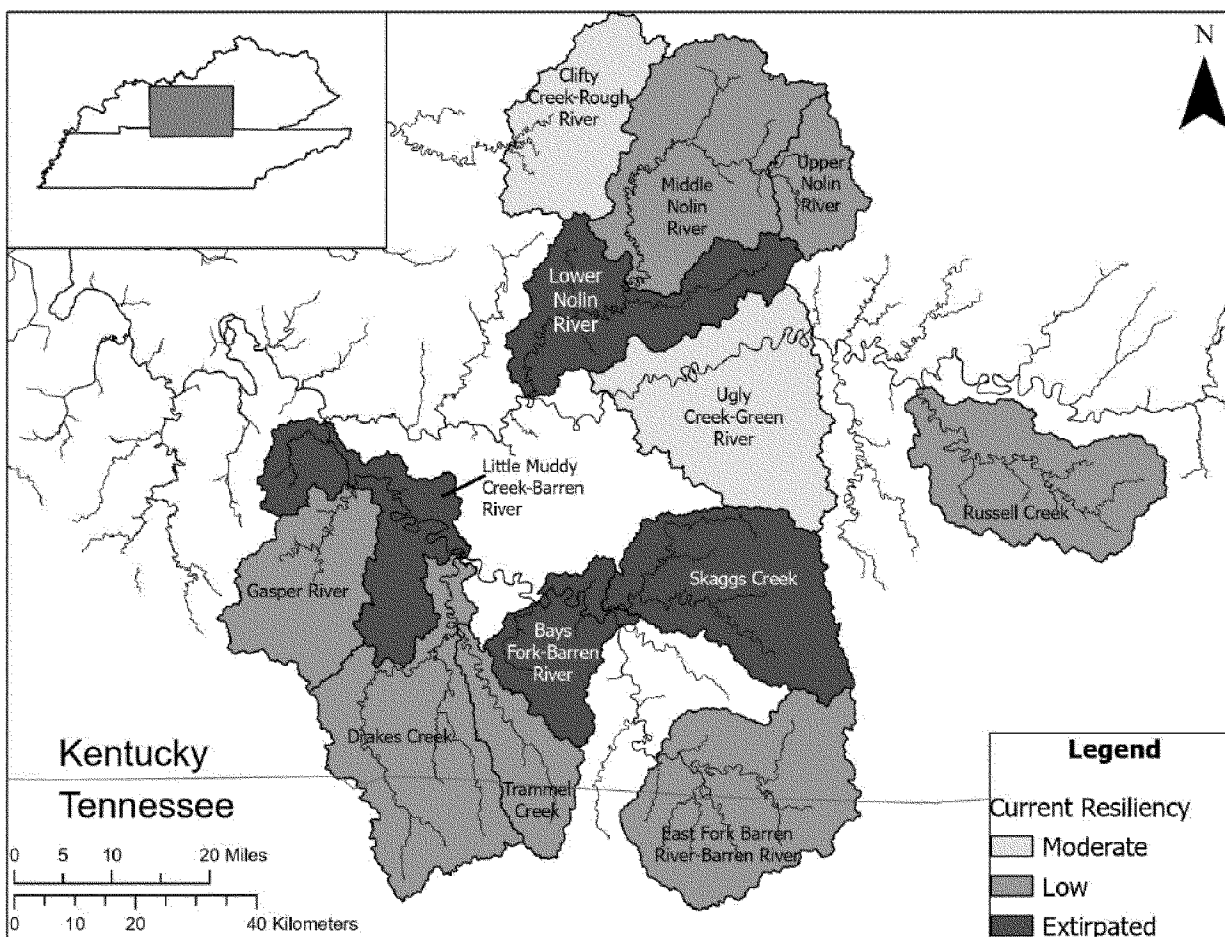


Figure 1. Kentucky creekshell range map, distributed across the Green River basin. The species is known from 13 analytical units.

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Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species.

The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes

actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the species’ expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole.

We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis, which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M-37021, January 16, 2009; “M-Opinion,” available online at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf>). The foreseeable future extends as far into the future as the Service and NMFS (hereafter, the Services) can make reasonably reliable predictions about the threats to the species and the species’ responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species’ life-history characteristics, threat-projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the Kentucky creekshell’s viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species’ ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species’ viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species’ life-history needs. The next stage involved an assessment of the historical and current condition of the species’ demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species’ responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R4–ES–2024–0065 on <https://www.regulations.gov> and at <https://ecos.fws.gov/ecp/species/8209>.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species’ current and future condition, in order to assess the species’ overall viability and the risks to that viability.

Species Needs

We assessed the best available information to identify the physical and biological needs to support individual

fitness at all life stages for the Kentucky creekshell. Full descriptions of all needs are available in chapter 2 of the SSA report (Service 2023, pp. 6–13), which can be found in docket number FWS–R4–ES–2024–0065 on <https://www.regulations.gov>, and on our internet site <https://ecos.fws.gov/ecp/species/8209/>. We have determined that the resource and demographic needs for the Kentucky creekshell include biotic and abiotic habitat characteristics as described below.

(1) Kentucky creekshell individuals of all life stages require habitat conditions characterized by clean, flowing water with appropriate water quality and temperature conditions and an absence of contaminants and fine sediments, as well as natural flow regimes that vary with respect to timing, magnitude, durations, and frequency of river discharge events. The species occurs in stable sand, cobble, and gravel substrates in riffles and runs that are predominantly silt-free.

(2) As filter feeders, Kentucky creekshells require adequate nutrition for survival and growth of juveniles and adults that includes suspended food and nutrients including (but not limited to) phytoplankton, zooplankton, rotifers, protozoans, detritus, and dissolved organic matter from the water column or sediments.

(3) The Kentucky creekshell requires host fish to complete its life cycle. Kentucky creekshell use the banded sculpin as a host fish (Haag and Cicerello 2016, p. 261); it is the only sculpin known to occur in the Kentucky creekshell range. The Kentucky creekshell requires sufficient host fish numbers to provide nutrition to and dispersal of glochidia. The presence of life history requirements for the banded sculpin influence Kentucky creekshell viability through host fish contribution to mussel recruitment. Suitable habitat for the banded sculpin is characterized as spring-fed and spring-influenced streams with riffle and pool areas with gravel and rubble substrate, adjacent riparian cover, and sufficient food items, including macroinvertebrates and small fish such as darters. The banded sculpin is susceptible to impacts from habitat fragmentation due to its small size and lower ability to swim the distance between suitable habitat patches compared to larger fishes (Etnier and Starnes 1993, p. 387). Additionally, even small vertical drops (2–3 inches) created by culverts can be a significant barrier to the banded sculpin’s upstream movement. Being a benthic species, the banded sculpin is particularly sensitive to silt and

sedimentation (Greenberg and Holtzman 1987, entire).

(4) Connectivity among Kentucky creekshell populations is also important for species viability. Although the species' capability to disperse is evident through its historical occurrence in a wide range of rivers and streams, instream barriers have fragmented Kentucky creekshell populations and suitable habitat, resulting in the isolation of populations, loss of access to quality habitat for one or more life stages, and prevention of host fish movement, which in turn, influences Kentucky creekshell distribution. Barriers to movement can cause isolation or patchy distributions of Kentucky creekshells, which may limit both genetic exchange and recolonization. Genetic exchange occurs between and among Kentucky creekshell beds via sperm drift, host fish movement, and movement of Kentucky creekshells during high flow events. For genetic exchange to occur, connectivity must be maintained, and proximity of males and females is essential.

(5) Most freshwater mussels, including the Kentucky creekshell, are found in mussel beds with other species that vary in size and density. The Kentucky creekshell occurs very sporadically within these beds, which are often separated by stream reaches in which the species is absent or rare. Because the Kentucky creekshell is often a component of these healthy mussel assemblages within optimal mussel habitats, maintaining the beds and connectivity between these populations is necessary for the species to maintain resiliency over time.

Threats

The following discussions include the evaluations of threats and associated stressors that are affecting the Kentucky creekshell and its habitats: (1) Habitat loss and degradation, including water quality degradation; (2) changing climate conditions; and (3) nonnative invasive species (Service 2023, chapter 3). We also considered the effects of small population size and enigmatic population declines in mussels. Full descriptions of each of the threats and their sources are available in chapter 3 of the SSA report (Service 2023, pp. 16–27).

Habitat Loss and Degradation

Land Cover

Certain land cover types have been correlated with degrading aquatic systems including urbanization and development and agricultural uses

including cultivated crops, hay/pasture land cover, and livestock operations.

Urbanization or Development

As a land cover type, the term “development” refers to urbanization of the landscape, including (but not limited to) land conversion for residential, commercial, and industrial uses and the accompanying infrastructure. The effects of urbanization may include alterations to water quality, water quantity, and habitat (both in-stream and streamside) (EPA 2003, entire). Urban development can lead to increased variability in streamflow, typically increasing the extent and volume of water entering a stream after a storm and decreasing the time it takes for the water to travel over the land before entering the stream (Giddings et al. 2009, p. 1). Impervious surface refers to all hard surfaces like paved roads, parking lots, roofs, and even highly compacted soils like sports fields. Impervious surfaces prevent the natural soaking of rainwater into the ground and ultimately and gradually seeping into streams (Brabec et al. 2002, p. 499). Instead, rainwater accumulates and often flows into storm drains, which rapidly drain to local streams. This flow results in deleterious effects on streams in three important ways (USGS 2014, pp. 2–5):

(1) *Water quantity*: Storm drains deliver large volumes of water to streams much faster than would naturally occur, often resulting in flooding and bank erosion that reshapes the channel and causes substrate instability. Increased high-velocity discharges can cause species living in streams (including mussels) to be stressed, displaced, or killed by fast-moving water and the debris and sediment carried in it. Displaced individuals may be left stranded out of the water once floodwaters recede or displaced into less suitable or unsuitable habitat.

(2) *Water quality*: Pollutants (e.g., gasoline, oil, road salts) that accumulate on impervious surfaces may be washed directly into streams during storm events. Freshwater mussels, as a group, are particularly sensitive to changes in water quality parameters including, but not limited to, dissolved oxygen, salinity, ammonia, elevated temperature, excessive suspended solids, and other pollutants.

(3) *Water temperature*: During warm and hot weather, the temperature of rainwater that falls on impervious surfaces rapidly warms to temperatures outside the species' tolerance and can stress or kill freshwater species when it enters streams.

Urbanization increases the quantity of impervious surfaces (Center for Watershed Protection 2003, p. 1). The resulting storm water runoff affects water quality parameters such as temperature, pH, dissolved oxygen, and salinity, which in turn alters the water chemistry such that it is less able to support aquatic biota, including mussels. The rapid runoff also reduces the amount of infiltration into the soil and into the water table, resulting in lower sustained streamflow, especially during droughts and dry periods (Giddings et al. 2009, p. 1). Within the Kentucky creekshell's range, there is one major city, Bowling Green, Kentucky (U.S. Census Bureau 2022). Bowling Green has a population of approximately 75,000 people and is the third most populated city in Kentucky. Bowling Green is located on the mainstem Barren River between the Gasper River and Drakes Creek, which both have populations of Kentucky creekshell. This city, along with other, smaller towns, ultimately contribute to the degradation of the aquatic conditions of the nearby rivers and streams due to the relatively high amounts of impervious surfaces.

Agricultural Land Cover

Cultivated crops, hay/pasture land cover types, and large crop farming operations contribute to nutrient pollution when best management practices are not properly implemented (EPA 2016, entire). Fertilizers from these operations are both rich in nitrogen and phosphorus and are the primary sources of nutrient pollution from agricultural sources. If fertilizers are not applied according to best management practices, including the appropriate rate, timing, and application method, water quality in stream systems can be negatively affected by excess nutrients from fertilizers.

Excess nutrients are transported to streams when it rains or when water and soil containing nitrogen and phosphorus wash into nearby waters or leach into groundwater. Excess nitrogen and phosphorus affect water quality and may cause lethal algal blooms in surface waters, which can reduce the dissolved oxygen to fatal levels for aquatic life (Carpenter et al. 1998, entire). Fertilized soils and livestock can also contribute significant sources of nitrogen-based compounds like ammonia and nitrogen oxides (Carpenter et al. 1998, entire). Ammonia is extremely toxic to freshwater mussels and other aquatic life and can be extremely detrimental if large amounts are deposited to surface waters (Augspurger et al. 2003, entire). Stream banks with unstable slopes from

agricultural clearing with no vegetative riparian buffer or the lack of stable cover crops between rotations on farmed lands can increase the amount of nutrients that enter nearby streams by way of increased soil erosion. Conversely, cover crops and other vegetation will use excess nutrients and increase soil stability (Barling and Moore 1994, p. 543). Livestock often use streams, which degrades water quality and stream bank stability and reduces water quantity available for mussels and other aquatic fauna that may occur downstream from these agricultural activities.

Siltation/Sedimentation

Excess siltation is a threat to mussel survival and can be a significant factor affecting mussel distribution when siltation prevents mussel life history needs from being met in habitat reaches (Dennis 1984, p. 150). Major sources of siltation and sedimentation (when silt and sediment particles accumulate on the stream bottom) are development and agriculture (Hasse and Lathrop 2003, p. 159) and instream gravel mining (see Instream Gravel Mining below). Legacy sediment resulting from past landscape development persists in the Green River drainage, but much of the current siltation/sedimentation is caused by activities that directly destabilize stream channels and remove riparian vegetation (*e.g.*, channelization, construction projects, land development). Stream bank erosion and stream scour are the primary generators of excess sediment in the Green River basin. According to the Kentucky Division of Water list of impaired streams that meet section 305(b) of the Clean Water Act (33 U.S.C. 1251 *et seq.*), the most prevalent pollutant in impaired streams in the Green River drainage is sedimentation/siltation, affecting 18 percent of assessed stream miles (KDOW 2022). Based on these data, 134 of 222 stream segments with known causes of impairment in the Green River drainage are impaired due to siltation and sedimentation, and the leading sources of the impairment include agriculture, coal mining, channelization, and loss of riparian habitat.

Sedimentation causes several negative effects on freshwater mussels, including reduced reproduction, reduced feeding, reduced respiration, and decreased survival (Goldsmith et al. 2021 pp. 104–105). The Kentucky creekshell relies on sight-feeding fishes as part of its life cycle; therefore, turbidity and high levels of suspended solids during critical reproductive periods may affect glochidial attachment to host fish and ultimately decrease recruitment in any

given population (McLeod et al. 2017, p. 348). Sedimentation affects mussel reproduction as elevated levels of suspended sediment may cause host fish to avoid such areas, thereby decreasing the likelihood of physical interaction between host fishes and gravid female mussels (Goldsmith et al. 2021, p. 12).

Elevated levels of suspended sediment affect the ability of freshwater mussels to filter sperm and food items from the water column. Suspended silt can interfere with mussel filtration and respiration and reduce mussel food consumption rates (Dennis 1984, p. 212; McMahon and Bogan 2001, p. 382). Stream beds can become inundated with fine sediment, which may lead to smothering of mussels (Goldsmith et al. 2021 p. 18). For example, one live Kentucky creekshell was found in the Upper Nolin River among stable substrates; however, the site was covered in shifting sands one year later and the individual was presumed dead (Compton 2023, pers. comm.). Additionally, silt hinders surface water infiltration into groundwater, and increased sedimentation can reduce or stop groundwater recharge, causing a decline in groundwater levels (Abdalla and Rawahi 2013, p. 1956; Rajendran et al. 2020, p. 1). The presence of groundwater and spring-fed streams are vitally important to the Kentucky creekshell as this is the preferred habitat of its host fish, the banded sculpin. In the future, siltation and sedimentation in rivers and streams are expected to increase due to associated human disturbance.

Instream Gravel Mining

Instream sand and alluvial gravel mining has been implicated in the destruction of mussel populations in the Southeast (Hartfield 1993, p. 138). Negative effects associated with gravel mining include stream channel modifications such as altered habitat, disrupted flow patterns, and sediment transport. Additionally, gravel mining degrades water quality, including increased turbidity, reduced light penetration, increased temperature, and increased sedimentation. This habitat and water quality degradation results in reductions in aquatic macroinvertebrate and fish populations, as well as negatively affects fish spawning and nursery habitats, causing cumulative food web disruptions (Kondolf 1997, p. 541; Brown et al. 1998, p. 988). Instream gravel mining has negatively affected Kentucky creekshell habitat for many years. (Cicerello 2005, p. 14).

Multiple instream gravel mining operations have been observed

throughout the species' range within the last 10 years. For example, in 2021, evidence of heavy machinery in the stream and severely altered streambed was noted at one gravel mine site immediately upstream of a known Kentucky creekshell population (Compton 2023, pers. comm.). This type of habitat alteration reduces the amount of suitable habitat and limits the ability of the species to move farther upstream. An additional gravel mining operation occurs in a stream valley immediately adjacent to a known Kentucky creekshell population. The Kentucky creekshell has not been observed in the mined stream valley; however, based on proximity to known populations and habitat conditions, the species very likely occurred there historically (Dinkins 2023, pers. comm.). Consequently, instream mining may be linked to the loss of the species from areas where it was historically present.

Impoundment Effects

The negative effects of impoundments and barriers on aquatic habitats and freshwater mussels are well-documented (Watters 2000, p. 261). Extinction/extirpation of North American freshwater mussels can be traced to impoundment and inundation of riffle habitats in all major river basins of the central and eastern United States (Haag 2009, p. 107; North Carolina Wildlife Resources Commission 2015, p. 109). Dams, either natural (by beavers or aggregations of woody debris) or manmade, can have various effects on stream ecosystems, many of them negative. Reductions in the diversity and abundance of mussels are primarily attributed to habitat loss caused by human-made impoundments (Neves et al. 1987, p. 63).

The Kentucky creekshell requires rivers and streams with natural flow regimes because the species requires a lotic (flowing water) environment. Perturbations that disrupt natural water flow patterns (*e.g.*, dams) thus have a negative influence on the Kentucky creekshell and its host fish species, the banded sculpin. Effects from instream barriers include population isolation, hydrological instability, high shear stress, scour, and cold-water releases, all of which suppress mussel recruitment (Hardison and Layzer 2001, p. 79; Smith and Meyer 2010, p. 543; Hubbs 2012, p. 8). Consequently, the construction and continued operation of dams has resulted in the likely extirpation of the Kentucky creekshell in many portions of its historical range including the decline of the species in the Green River which can be partly attributed to long-term altered flows from the Green River Lake

Dam (Konrad et al. 2011, entire; Haag and Cicerello 2016, p. 261). Furthermore, Kentucky creekshell occurrences have not been reported from heavily dam-influenced reaches on the mainstem Barren, Nolin, and Rough Rivers indicating dam-influenced reaches do not provide conditions that meet the species' life-history needs.

The construction and presence of dams had a substantial negative impact on the Kentucky creekshell and was a primary driver of its condition historically. The historical negative impact of dams continues through isolation of populations and the degradation and fragmentation of habitat throughout the range of the species. Although some obsolete navigation locks and dams on the Green and Barren Rivers have been removed, the historical negative effects associated with large reservoir dams and smaller, more numerous low-head dams continue to negatively influence the species and its habitats.

Changing Climate Conditions

Changing climate conditions can affect freshwater mussels, their habitat, and their host fish by altering water temperatures and precipitation patterns that increase flooding, prolong droughts, or reduce stream flows (Nobles and Zhang 2011, pp. 147–148). Increases in water temperatures alter fundamental ecological processes, thermal suitability of aquatic habitats for resident species, and their geographic distribution, thus increasing the likelihood of species extinction and loss of biodiversity.

Climate change may cause changes and shifts in seasonal patterns of precipitation and runoff, which can alter the hydrology of stream systems, affecting species composition and ecosystem productivity. Aquatic organisms are sensitive to changes in frequency, duration, and timing of extreme precipitation events such as floods or droughts, potentially resulting in interference of reproduction. Further, increased water temperatures and seasonally reduced streamflow can alter many ecosystem processes, including increases in nuisance algal blooms.

Some nonnative invasive species may be better adapted to the effects of climate change, including more tolerance to higher temperatures (Ferreira-Rodriguez et al. 2017, entire). Changes in presence or combinations of native and nonnative invasive species could result in specific ecological responses to changing climate conditions that cannot be easily predicted at this time. Shifts in mussel community structure may occur in response to climate-induced changes in

water temperatures since sedentary freshwater mussels have limited refugia from disturbances such as droughts and floods, and because they are thermo-conformers whose physiological processes are constrained by water temperature within species-specific thermal preferences (Galbraith et al. 2010, p. 1,176).

The Kentucky creekshell is particularly vulnerable to climate change given its limited spatial distribution as an endemic to the Green River basin. The expected effects of climate change in this region will lead to more frequent and severe storms and droughts, which will destabilize suitable habitat, dewater headwater streams occupied by the species, and negatively affect host fish distribution. The species is susceptible to droughts that affect smaller streams to a greater degree, as well as flooding/scouring events, as the species is found in streams with unstable and mobile substrates. Conversely, the species is associated with spring-influenced habitats, which may provide cool, flowing water during long dry periods.

Overall, we expect the effects of climate change will negatively impact the Kentucky creekshell through changes in hydrology and stream flow, water temperature, mussel community structure (including invasive species), and drought. These impacts are anticipated to increase in the future.

Invasive Species

Approximately 42 percent of federally threatened or endangered species are estimated to be significantly affected by invasive species (Pimentel et al. 2004). When an invasive species is introduced into an ecosystem, it may have many advantages over native species, such as easy adaptation to varying environments and a high tolerance of living conditions that allow it to thrive in its new habitat. There may not be natural predators to keep the invasive species in check; therefore, it can potentially live longer and reproduce more often, further reducing the biodiversity in the system. The native species may become an easy food source for invasive species, or the invasive species may carry diseases that extirpate populations of native species. There are several invasive species that affect freshwater mussels (Service 2023, p. 23). Currently, only the Asian clam is likely to pose a significant risk to the Kentucky creekshell.

The Asian clam has several competitive advantages over freshwater mussels including competing for space and food resources while being more tolerant of higher temperatures (Fuller and Richardson 1976, p. 52, Strayer

1999, p. 82; Ferreira-Rodriguez and Pardo 2017, p. 171; Ferreira-Rodriguez et al. 2017, p. 941; Haag et al. 2020, entire). While feeding, the Asian clam may ingest large numbers of freshwater mussel sperm, glochidia, and newly metamorphosed juveniles that could severely alter the reproductive ability of nearby mussel populations (Strayer 1999, p. 82). The effect of Asian clams on freshwater mussel habitat may also contribute to the below-described enigmatic decline (Haag 2019, entire).

Asian clams grow rapidly and experience a rapid die-off following reproduction, causing toxic ammonia spikes in the streams and rivers (Scheller 1997, p. 2; Strayer 1999, p. 82; Cherry et al. 2005, p. 377). Although we do not have information that the Asian clam is currently impacting Kentucky creekshell populations, the clam has been documented to outcompete other freshwater mussels and occurs throughout the Kentucky creekshell range. We expect the negative effects of this nonnative invasive species will continue into the future as well as to receive more documented information about the Asian clam's effect on native mussel populations once studies are published.

Enigmatic Population Declines

Enigmatic population declines have been documented in freshwater river mussel populations since the 1960s. Mussel populations occasionally experience declines in the absence of any obvious cause. These declines are termed enigmatic population declines, due to their mysterious and currently puzzling nature (Haag 2012, p. 341). The cause of these die-offs is unknown, but researchers suspect either disease or the introduction of the Asian clam (see section 3.4 of the SSA report) are likely factors (Haag 2019, entire; Service 2023, pp. 22–24). Contaminants that are not easily observable, such as metals bound in sediments, a result of past land cover, could also be a contributor (Price et al. 2014, p. 855). Characteristics of enigmatic declines include fauna-wide collapse affecting all mussel species, recruitment failure leading to a senescent fauna, rapid onset often leading to faunal collapse within 10 years, and a faunal collapse that proceeds upstream over 10 to 20 years in most cases (Haag 2019, entire). These enigmatic declines have been documented within rivers and streams occupied by the Kentucky creekshell including: the Nolin River, Drakes Creek, and Gasper River, all which have extant Kentucky creekshell populations characterized as low resiliency (Haag 2019, p. 49).

Cumulative/Synergistic Effects

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Populations that have a small effective population size (number of breeding individuals) and that are geographically isolated from one another are more vulnerable than more robust populations. The fragmentation of habitat segments and isolation caused by instream barriers and inundation of riffle habitats contribute to the extinction risk that mussel populations face from stochastic events (Haag 2008, p. 107) and restrict or prevent the movement of host fish.

Cumulative or synergistic impacts can occur when climate change acts as an additional stressor to sensitive freshwater systems, which are already adversely affected by a variety of other human impacts, such as altered flow regimes and deterioration of water quality. Changes in presence or combinations of native and nonnative invasive species could result in specific ecological responses to changing climate conditions. These types of changes (e.g., increased temperatures that are more favorable or more tolerated by a nonnative invasive species compared to a native species) can result in novel interactions or situations that may necessitate adaptive management strategies.

Depletion of energetic reserves of native mussels to cope with increasing temperatures could compromise native mussels' tolerance to additional stressors such as competition with invasive species, including the Asian clam, or food reduction (Ferreira-Rodriguez and Pardo 2017, p. 171) (see Changing Climate Conditions above).

Conservation Efforts and Regulatory Mechanisms

Large dams in the Green River basin fall into two general categories: reservoir dams and navigation dams. Reservoir dams such as Rough River Dam, Nolin

River Dam, Green River Dam, and Barren River Dam are used primarily for hydropower production, flood control, and/or municipal water supply. Navigation dams in the species' range include the Green River Locks and Dams 1–6 and Barren River Lock and Dam 1. Several conservation efforts are occurring in the range of the Kentucky creekshell that address habitat fragmentation and isolation of populations as well as Kentucky creekshell reintroduction efforts. Green River Lock and Dam (L&D) 6 and Barren River L&D 1 were removed in 2017 and 2022, respectively, through a collaborative effort between State and Federal agencies and nongovernmental partners (Compton et al. 2017, entire). Additionally, a substantial portion of Green River L&D 5 was removed in 2022 with plans to complete the removal in the fall of 2024. These dam removals have expanded free-flowing hydrological conditions of the Green and Barren Rivers by more than 40 kilometers (km) (25 miles (mi)) and have provided increased aquatic habitat connectivity throughout much of the Kentucky creekshell range. For example, the removal of Barren River L&D 1 in 2022 restored approximately 24 continuous km (15 mi) of stream habitat, changing this reach from a lentic (still water) habitat into a lotic (moving water) habitat suitable for the Kentucky creekshell and its host fish. Additionally, this dam removal now connects the Gasper River Kentucky creekshell population with the Drakes Creek and Trammel Creek populations.

The Center for Mollusk Conservation (CMC) is a mussel propagation facility operated by the Kentucky Department of Fish and Wildlife Resources since 2002 with the mission to restore and recover rare and imperiled freshwater mollusks. The CMC has been working on propagation efforts for the Kentucky creekshell for more than 10 years and has reared juveniles for release since 2016 using the banded sculpin and in vitro (outside the body) culturing methods since 2021 resulting in higher numbers of juveniles (McGregor 2023, pers. comm.). Approximately 4,888 juveniles have been released in 14 locations in the Green River, Rough River, South Fork Nolin River, Middle Creek, Russel Creek, Walter's Creek, and Nolin River. Propagation efforts are ongoing with reintroductions and augmentations scheduled to be released in the fall of 2024. However, the post-release survival and reproduction of propagated Kentucky creekshell juveniles and the establishment of new Kentucky creekshell populations as a

result of these releases have not been fully assessed.

State Conservation Actions and Laws

The Kentucky creekshell is State-listed as endangered in Kentucky. This listing status protects the species by prohibiting any person from the import, transport, possession for resale or sale of the Kentucky creekshell or parts (shell, etc.) (KRS § 150.180). The Kentucky creekshell is not currently listed by the State of Tennessee. The Kentucky creekshell and its habitats are afforded some protection from water quality and habitat degradation under Kentucky's Forest Conservation Act of 1998 (KRS §§ 149.330–149.355), Kentucky's Agriculture Water Quality Act of 1994 (KRS §§ 224.71–224.140) and the Tennessee Water Quality Control Act of 1971 (TN Code § 69–3–121). Although the protections afforded by these statutes and regulations are not directed specifically towards Kentucky creekshell and have not prevented the degradation of some habitats used by the Kentucky creekshell, there have been some improvements in water quality and habitat conditions in areas occupied by the species stemming from these regulatory mechanisms.

The Kentucky creekshell is identified as a Species of Greatest Conservation Need in Kentucky's State Wildlife Action Plan (SWAP). By identifying declining or rare species and management or protection needed to improve their conservation status, the SWAP intends to guide management and conservation of species and habitats before they become too rare or costly to restore. The Kentucky creekshell has a State rank of S1S2 (imperiled) with the highest priority for the State. Actions outlined in the SWAP to benefit Kentucky creekshell include population monitoring, propagation, augmentation of existing low-resilient populations, and further genetic or taxonomic studies. Conservation issues identified by the SWAP include dams and water management/use, ecosystem modifications, and pollution (Kentucky Department of Fish and Wildlife Resources 2023, entire). The Kentucky creekshell is not listed in the Tennessee SWAP plan as it was not known to occur in the State at the time the latest SWAP plan was written.

Federal Laws

The Kentucky creekshell and its habitats are afforded some protection from water quality and habitat degradation under the Clean Water Act. While the protections afforded are not directed specifically towards Kentucky creekshell and have not prevented the

degradation of some habitats used by the Kentucky creekshell, there have been certain improvements in water quality and habitat conditions stemming from these regulatory mechanisms.

The Kentucky creekshell receives incidental protection under the Endangered Species Act because populations in portions of the Barren River and Green River share habitats with multiple federally listed mussels and critical habitat. Some of these mussels include the fanshell (*Cyprogenia stegaria*), rough pigtoe (*Pleurobema plenum*), spectaclecase (*Cumberlandia monodonta*), pink mucket (*Lampsilis abrupta*), and sheepsnose mussel (*Plethobasus cyphus*); and critical habitat for the longsolid (*Fusconaia subrotunda*) and round hickorynut (*Obovaria subrotunda*). Section 7 of the Act requires Federal agencies to consult with the Service on any action that may affect a listed species or any action that may destroy or adversely modify critical habitat. Section 9 of the Act also provides protection against “take” of the species (“take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct). In Kentucky, streams supporting federally threatened or endangered species receive additional protection under Kentucky’s water quality standards. Pursuant to 401 KAR §§ 10:031, Section 8, the existing water quality and habitat of these Outstanding State Resource Waters (OSRWs) shall be maintained and protected, unless it can be demonstrated that lowering of water quality or a habitat modification will not have a harmful effect on the threatened or endangered species that the water supports. Kentucky Pollutant Discharge Elimination System permits associated with OSRWs typically contain additional requirements designed to protect waters supporting listed species.

It is also unlawful under the Lacey Act (see 16 U.S.C. 3372(a)(2)(A)) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State. Because the possession of Kentucky creekshell is illegal in Kentucky, interstate or international sale of individuals collected is prohibited by the Lacey Act.

Current Condition

The Kentucky creekshell’s range and distribution has declined over time. Four of 13 analytical units (AUs) are now extirpated. In our SSA analyses, we considered an analytical unit extant if it

contained records after 2003. We considered AUs with observations prior to 2003 (and no more recent observations) as historical. We considered analytical units to be extirpated if no individuals were detected since 1973, indicating a 50-year absence. This species was formerly the most abundant species found in the Nolin River in the 1960s, and hundreds of shells were found in the 1980s. Very few individuals have been found in this system since 2003. On the Green River mainstem at Munfordville, hundreds of live individuals were found, and hundreds of shells were collected multiple times during the 1960s, whereas a 2022 survey targeting the species for propagation efforts in the same general location found just three individuals in 24 person-hours search time.

In our SSA, we describe the current condition of the species using categories that estimate overall condition (resiliency) of the Kentucky creekshell populations. We identified five major factors that act or will act on the viability of Kentucky creekshell populations. These include habitat loss and degradation (*i.e.*, aquatic degrading land cover, siltation/sedimentation, gravel mining, impoundment effects), climate change, invasive species, enigmatic population declines, and conservation actions. See chapter 4 in the SSA report for further explanation of the analysis methodology (Service 2023, pp. 28–31). The Kentucky creekshell is known historically from 13 AUs. Historical populations in the Lower Nolin River, Bays Fork–Barren River, Skaggs Creek, Little Muddy Creek–Barren River are now considered to be extirpated, and current condition was not assessed for these AUs. Currently, the Kentucky creekshell occurs in nine AUs in the Green River Basin. We assessed the current condition of these nine AUs to inform species’ current viability. We determined no AU currently exhibits high resiliency, two AUs exhibit moderate resiliency, and seven AUs exhibit low resiliency. To assess resiliency, we considered five variables for each AU—instream habitat (substrates), percent of suitable land cover, length of occupied reaches, abundance of individuals on surveys, and connectivity as a result of the presence or absence of dams/barriers. The two moderately resilient AUs are characterized by higher habitat condition scores (substrates, land cover, and connectivity) and higher extent of occupancy than low-resiliency AUs. The Kentucky creekshell currently occurs in a limited number of

populations/watersheds that are disjunct from each other. Each of those populations is very small, and only a small portion of those populations is reproducing. It is not clear or expected that these populations can sustain themselves at such low levels, which elevates the risk of local extirpations. In addition, the majority of AUs have low resiliency (seven of nine), and the two moderate-resiliency AUs are impacted by existing and ongoing threats, such as low population numbers and sedimentation, as well as increasing threats from urbanization and incompatible land use changes.

Representation describes the ability of a species to adapt to changing environmental conditions over time and is characterized by the breadth of genetic and environmental diversity within and among populations. The more representation a species has, the more it is capable of adapting to changes (natural or human caused) in its environment. We determined the Kentucky creekshell’s current representation by assessing attributes that demonstrate a species’ inherent adaptive capacity. These attributes relate to the species’ ability to shift in space or persist in place in response to changing environmental conditions. We found that the species’ representation is moderate given its inherent ability to adapt to change. Movement and abiotic niche are deemed to be low for the species because it cannot readily move away from stressors, and it relies on a fish host with a relatively small home range. However, many characteristics such as minimal parental investment, high fecundity, and multiple reproductive cycles in lifetime are high abilities to adapt to change for the species. The combination of high and low abilities to adapt to change bring us to conclude that the species exhibits moderate representation.

We have determined the species’ current redundancy to be low based on its geographically small range, limiting preferred habitat; lack of connectivity between and among populations; and lack of highly resilient AUs. Low redundancy means the Kentucky creekshell is more vulnerable to catastrophic events than species with higher redundancy. Potential catastrophes that could affect the species include extreme, range-wide drought or a chemical or other hazardous waste spill that affects water quality conditions across multiple populations.

In summary, the Kentucky creekshell currently occurs in a limited number of populations/watersheds that are disjunct from each other. The majority

of AUs have low resiliency (seven of nine), and the two moderate-resiliency AUs are impacted by existing and ongoing threats, such as low population numbers and sedimentation, as well as increasing threats from urbanization and incompatible land use changes.

As part of the SSA, we also developed two plausible future-condition scenarios to capture the range of future viability including future threats and the projected responses by the Kentucky creekshell. We evaluated the future condition of the Kentucky creekshell in 2040 and 2060 by assessing future land cover change and climate change under high emissions and lower emissions scenarios. Because we determined that the current condition of the Kentucky creekshell is consistent with an endangered species (see Determination of the Kentucky Creekshell's Status), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2023, pp. 43–49) for the full analysis of future scenarios.

Determination of the Kentucky Creekshell's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an “endangered species” as a species in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we determined the Kentucky creekshell currently has limited resiliency, redundancy, and representation and is expected to decline further. Historically, the Kentucky creekshell was known from 13 AUs in the Green River basin. Historical

populations in the Lower Nolin River, Bays Fork–Barren River, Skaggs Creek, and Little Muddy Creek–Barren River are now considered to be extirpated, and the species is currently known from 9 AUs. Current factors affecting the species' viability include loss and degradation of suitable habitat, low connectivity (*i.e.*, isolation by dams), and small population size. There is not enough evidence yet to assess the direct effects of invasive species, enigmatic population declines, or conservation actions on Kentucky creekshell or its host fish. We determined that seven analytical units exhibit low current resiliency, two analytical units exhibit moderate resiliency, and no units exhibit high resiliency. Current resiliency is driven by poor instream habitat, low percent of suitable land cover, abundance as detected on recent surveys, shorter occupied reaches, and lack of connectivity due to dams/barriers.

With regard to the species' adaptive capacity, the Kentucky creekshell has moderate representation at the species level, with an inherent capacity to adapt in place. The species' redundancy is low based on its geographically small range, limiting preferred habitat; lack of connectivity with other populations; and lack of highly resilient analytical units or populations.

Thus, after evaluating the best available information and as a result of the combination of these factors, the threats have a high imminence and magnitude such that they are significantly affecting the species' current viability. Accordingly, the species meets the definition of an endangered species.

We do not find the Kentucky creekshell meets the definition of a threatened species because the species has already shown dramatic declines in abundance and resiliency of its populations. With the majority of populations in low resiliency, the species' condition is currently in poor condition and is expected to decline over time due to existing threats, such as low population numbers and sedimentation, as well as increasing threats in some of the watersheds from increasing urbanization and incompatible land use changes. The Kentucky creekshell has low redundancy and moderate species-level representation, with an inherent capacity to adapt to changing environmental conditions but increased vulnerability to catastrophic events because it cannot readily move away from stressors, and it relies on a fish host with a relatively small home range. Thus, after assessing the best available

information, we determine that Kentucky creekshell is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the Kentucky creekshell is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Kentucky creekshell warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the Kentucky creekshell meets the definition of an endangered species. Therefore, we propose to list the Kentucky creekshell as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the

conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened ("downlisting") or removal from protected status ("delisting"), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (<https://www.fws.gov/program/endangered-species>), or from our Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the

academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Kentucky and Tennessee would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Kentucky creekshell. Information on our grant programs that are available to aid species recovery can be found at: <https://www.fws.gov/service/financial-assistance>.

Although the Kentucky creekshell is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled Interagency Cooperation and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, 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. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action which *is likely* to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or

adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2).

Examples of discretionary actions for the Kentucky creekshell that may be subject to conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the U.S. Department of Agriculture, Environmental Protection Agency, or National Park Service (NPS) as well as actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers (USACE) under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, and the Service's implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed any of the following acts with regard to any endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect) within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or (5) sell or

offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, NMFS, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22, and general Service permitting regulations are codified at 50 CFR part 13. With regard to endangered wildlife, a permit may be issued: for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

II. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as

research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as

space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information compiled in the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2)

regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best scientific data available at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting,

symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Essential Physical or Biological Features

As described in Summary of Biological Status and Threats, the Kentucky creekshell is a freshwater mussel that occurs in rivers and streams. Occasional or regular interaction among individuals in different reaches not interrupted by a barrier likely occurs, but in general, interaction is strongly influenced by habitat fragmentation and distance between occupied river or stream reaches. Once released from their fish host, freshwater mussels are benthic, generally sedentary aquatic organisms and closely associated with appropriate habitat patches within a river or stream.

We derive the specific physical or biological features essential to the conservation of the Kentucky creekshell from studies of the species’ habitat, ecology, and life history as described below. The primary habitat elements that influence resiliency of the Kentucky creekshell include water quality, water quantity, substrate, habitat connectivity, and the presence of host fish species to ensure recruitment. Adequate flows ensure delivery of oxygen, enable reproduction, deliver food to filter-feeding mussels, and reduce contaminants and fine sediments from interstitial spaces. Stream velocity is not static over time, and variations may be attributed to seasonal changes (with higher flows in winter/spring and lower flows in summer/fall), extreme weather events (e.g., drought or floods), or anthropogenic influence (e.g., flow regulation via impoundments). These

features are also described above as species needs under Summary of Biological Status and Threats, and a full description is available in the SSA report; the resource and demographic needs for breeding, feeding, sheltering, and dispersal of the Kentucky creekshell include the following: (1) Adequate freshwater availability (water quantity) and sufficient water quality, including spring-influenced river sections; (2) appropriate substrates; (3) sufficient food and nutrition; (4) availability of sufficient host fish numbers; (5) connected instream habitats; and (6) appropriate abundance, density, and distribution of mussel beds (aggregations of freshwater mussels).

Additional information can be found in the SSA report (Service 2023, entire; available on <https://www.regulations.gov> under Docket No. FWS-R4-ES-2024-0065).

We have determined that the following physical or biological features are essential to the conservation of the Kentucky creekshell:

(1) Water quantity and quality necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages, including (but not limited to): water conditions in the stream that are cool; are well-oxygenated with no evidence of excessive sediments or suspended solids, salinity, ammonia, nutrients, pesticides, or herbicides; and have a stream flow and pattern consistent with natural flow regimes. Spring-influenced river sections are important habitat types for this species as most Kentucky creekshell populations are associated with this habitat type, and this is also the preferred habitat type for the host fish, the banded sculpin.

(2) Suitable substrates and connected instream habitats characterized by geomorphically stable stream channels and banks (*i.e.*, channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation) and stable riffle-run-pool habitats that provide flow refuges consisting of predominantly silt-free, stable coarse sand, gravel, and cobble substrates.

(3) Adequate food availability for Kentucky creekshell including (but not limited to): suspended phytoplankton, zooplankton, rotifers, protozoans, detritus, and dissolved organic matter from the water column or sediments.

(4) Habitat conditions that support the presence and abundance of banded sculpin, the host fish necessary for Kentucky creekshell recruitment, as well as the actual presence and

abundance of the banded sculpin in the habitat.

(5) Connected instream habitats without barriers such as dams and perched or undersized culverts to provide suitable lotic rather than lentic habitat; access to quality habitat for multiple life stages of Kentucky creekshell; access for host fish movement, which in turn, may influence Kentucky creekshell distribution and provide genetic exchange for both species and recolonization of Kentucky creekshell.

(6) Appropriate abundance, density, and distribution of mussel beds (aggregations of freshwater mussels) such that local stochastic events do not necessarily eliminate the bed(s), allowing the mussel beds and the overall local population within a stream reach to recover from any single event and for resilient populations.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of the Kentucky creekshell may require special management considerations or protections to reduce the following threats:

(1) Alteration of the natural flow regime (modifying the natural hydrograph and seasonal flows), including groundwater and surface water withdrawal as well as water releases from impoundments and reservoirs, resulting in hydrological instability, high shear stress, and scour.

(2) significant alteration of water quality and nutrient pollution from a variety of activities, such as urban development, mining, and agricultural activities;

(3) alteration of instream substrate, stream channels, and stream banks from a variety of activities, including but not limited to those that cause stream siltation and sedimentation, destabilize stream channels, and result in the removal of riparian vegetation (*e.g.*, instream gravel mining, agriculture, channelization, construction projects, and land development);

(4) urbanization of the landscape, including (but not limited to) land conversion for residential, commercial, and industrial uses and the accompanying infrastructure (impervious surfaces, pipelines, roads, bridges, utilities), and urban water uses

(resource extraction activities, water supply reservoirs, wastewater treatment, etc.);

(5) land use activities that remove large areas of forested wetlands and riparian systems;

(6) dam, culvert and pipe, or other instream installations that create barriers to movement for the Kentucky creekshell, or their host fish, the banded sculpin;

(7) impacts from invasive species;

(8) changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and

(9) other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

Management activities that could ameliorate these threats include but are not limited to: use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of groundwater and spring-fed streams and moderation of surface and ground water withdrawals to maintain natural flow regimes; use of best management practices when releasing water from reservoirs/impoundments; improved stormwater management; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; removal of instream barriers; prevention of instream gravel mining; and controlling invasive species.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing. We also are proposing to designate specific areas outside the geographical area occupied by the species because we have determined those areas are essential for the conservation of the species. Rangeland recovery considerations, such as maintaining existing genetic diversity and representation of all major portions of the species' current range, were

considered in formulating this proposed critical habitat designation. Given the Kentucky creekshell's substantial lost historical range and currently fragmented populations, we are designating unoccupied areas. The unoccupied critical habitat areas we are adding each contain one or more physical or biological features essential to the conservation of the Kentucky creekshell (although not required by 50 CFR 424.12). These features include suitable water quality and quantity, substrates, food, host fish, connected instream habitat, and/or mussel beds. Designating unoccupied areas would aid in increasing the species' currently low redundancy, as having additional protected and connected habitat will contribute to the conservation of the species as it will allow the species to expand in the future through recovery efforts. Thus, the unoccupied units we are designating are essential for the conservation of the Kentucky creekshell.

Sources of data for this proposed critical habitat designation include multiple databases maintained by universities, information from State agencies throughout the species' range, and survey reports on streams throughout the species' range (see SSA report (Service 2023, entire)). We have also reviewed available information that pertains to the habitat requirements of this species. Sources of information on habitat requirements include studies conducted at occupied sites, agency reports, and data collected during monitoring efforts (Service 2023, entire).

In summary, for areas within the geographical area occupied by the species at the time of listing, we delineated occupied critical habitat unit boundaries using the following criteria:

(1) Stream reaches with species occurrences after 2003;

(2) Suitable habitat with at least one physical or biological feature present, such as suitable substrates and spring-influenced river reaches;

(3) A stream reach that provides a connective corridor between populations; and/or

(4) A stream reach that may contain a historical Kentucky creekshell occurrence.

For areas within the geographical area not occupied by the species at the time of listing, we delineated unoccupied critical habitat unit boundaries using the following criteria:

(1) Stream reaches with species occurrences before 2003 or expert opinion that the species likely once existed in the reach;

(2) Suitable habitat with at least one physical or biological feature present,

such as suitable substrates and spring-influenced river reaches; and

(3) A stream reach that provides a connective corridor between populations or provides a logical reintroduction location for the recovery of a unit.

In addition, we determined the upstream extent of critical habitat units as the first perennial tributary confluence upstream of the upstream-most occurrence record and the downstream extent as the mouth of the stream of the farthest downstream record. The lateral extent of each unit includes the bankfull width of the stream. We considered portions of the Kentucky creekshell's historical, current range as well as any stream segment that had one or more PBFs that would contribute to the continuation of the species. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation

with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat areas that we have determined are occupied at the time of listing (*i.e.*, currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species. We have also identified, and propose for designation as critical habitat, four unoccupied areas that are essential for the conservation of the species. These unoccupied areas all have one or more

of the physical or biological features present to support Kentucky creekshell's life-history processes.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document.

Proposed Critical Habitat Designation

We are proposing 10 units as critical habitat for Kentucky creekshell. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Kentucky creekshell. Critical habitat includes only stream channels up to bankfull height, where the stream base flow is contained within the channel. The 10 areas that we propose as critical habitat are: (1) Green River; (2) Barren River; (3) Gasper River; (4) Drakes Creek; (5) Trammel Creek; (6) Salt Lick Creek; (7) Russell Creek; (8) Middle Nolin River; (9) Upper Nolin River; and (10) Rough River. Table 1 shows the proposed critical habitat units and the approximate area of each unit.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR KENTUCKY CREEKSHELL

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit number/name	Adjacent riparian land ownership	Length of unit in miles (kilometers)	Occupied?
Unit 1: Green River, Subunit 1a (Green River)	Private, NPS, State agency	72.21 (116.2) 0.67 (1.1) 0.12 (0.2) Total = 73.0 (117.5)	Yes.
Unit 1: Green River, Subunit 1b (Green River)	Private, NPS	50.2 (80.8) 7.5 (12.1) Total = 57.7 (92.9)	No.
Unit 2: Barren River	Private	79.9 (128.6)	No.
Unit 3: Gasper River	Private	52.8 (85)	Yes.
Unit 4: Drakes Creek	Private	55.1 (88.7)	Yes.
Unit 5: Trammel Creek	Private	15.9 (25.6)	Yes.
Unit 6: Salt Lick Creek	Private	19.1 (30.7)	Yes.
Unit 7: Russell Creek	Private	53.7 (86.4)	Yes.
Unit 8: Middle Nolin River, Subunit 8a (Nolin River)	Private, USACE, State agency	53.7 (86.4) 0.38 (0.63) 0.39 (0.68) Total = 54.5 (87.7)	No.
Unit 8: Middle Nolin River Subunit 8b (Round Stone Creek).	Private, USACE	9.8 (15.9)	Yes.
Unit 9: Upper Nolin River	Private, State Agency	0.02 (0.03) Total = 9.9 (15.9) 21.3 (34.3) 2.6 (4.2) Total = 23.9 (38.5)	Yes.
Unit 10: Rough River Subunit 10a (Rough River and Meeting Creek).	Private, USACE	35.8 (57.6)	Yes.
Unit 10: Rough River Subunit 10b (Clifty Creek)	Private, USACE	1.6 (2.7) Total = 37.5 (60.4) 11.3 (18.2) 0.34 (0.54)	No.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR KENTUCKY CREEKSHELL—Continued

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit number/name	Adjacent riparian land ownership	Length of unit in miles (kilometers)	Occupied?
		Total = 11.6 (18.7)	
Total		544.6 (876.4)	

Note: Miles may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for Kentucky creekshell, below.

Unit 1: Green River

Unit 1 consists of a total of 130.7 river miles (210.4 km) within two subunits; one that is occupied, and one that is unoccupied habitat. Subunit 1a (Green River) is occupied, while Subunit 1b (Green River) is unoccupied.

Subunit 1a (Green River): Subunit 1a consists of 73.0 river miles (117.5 km) of Green and Hart Counties, Kentucky, from the confluence of Russell Creek near Greensburg, Kentucky, downstream to the Edmonson County line in Mammoth Cave National Park. Nearly all (approximately 99 percent) of the lands adjacent to Subunit 1a are privately owned including lands managed under the Green River Watershed conservation easement by The Nature Conservancy. The remaining lands adjacent to this subunit (one percent) include parts of the Mammoth Cave National Park, managed by the National Park Service, and Western Kentucky University's Upper Green River Biological Preserve, which is managed by the State of Kentucky. Subunit 1a is considered occupied by the species and contains the physical or biological features 1 through 6 (See Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit include alteration of the natural flow regime; significant alteration of water quality and nutrient pollution; urbanization of the landscape; land use activities that remove large areas of forested wetlands and riparian systems; dam, culvert and pipe, or other instream installations that create barriers to movement; impacts from invasive species; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include use of

best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of groundwater and spring-fed streams and moderation of surface and ground water withdrawals to maintain natural flow regimes; use of best management practices when releasing water from reservoirs/impoundments; improved stormwater management; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; removal of instream barriers; prevention of instream gravel mining; and controlling invasive species (see Special Management Considerations or Protection).

Subunit 1b (Green River): Subunit 1b consists of 57.7 river miles (92.9 km) of Edmonson, Butler, and Warren Counties, Kentucky. The unit is located from the Edmonson County line in Mammoth Cave National Park to the confluence with the Barren River in Woodbury, Kentucky. Approximately 87 percent of the lands adjacent to Subunit 1b are owned by private entities, and the remaining 13 percent is managed by the National Park Service for the Mammoth Cave National Park. Subunit 1b is currently unoccupied by the species and contains the physical or biological features 1 through 4, and 6 (See Summary of Essential Physical or Biological Features) essential to the conservation of the species. The unit will contain physical and biological feature 5 once Green River Lock and Dam 5 is completely removed (see below for more details).

Threats identified within this unit includes alteration of the natural flow regime; significant alteration of water quality and nutrient pollution; urbanization of the landscape; land use activities that remove large areas of forested wetlands and riparian systems; dam, culvert and pipe, or other instream installations that create barriers to movement; impacts from invasive species; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances

that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of groundwater and spring-fed streams and moderation of surface and ground water withdrawals to maintain natural flow regimes; use of best management practices when releasing water from reservoirs/impoundments; improved stormwater management; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; removal of instream barriers; prevention of instream gravel mining; and controlling invasive species.

Suitable habitat in this area was lost during the construction of Green River Lock and Dam (GRLD) 5 and 6 in the early 1900s, which isolated the Green River populations from the Barren River populations; however, with the removal of GRLD 6 in 2017 and partial removal of GRLD 5 in 2022 (with full removal expected in fall 2024), suitable habitat has been gradually restored. Although some evidence suggests that Kentucky creekshell populations in subunit 1b may not have been as abundant as in subunit 1a due to changes in karst landscape characteristics, experts still believe that they were sufficient to facilitate genetic exchange between the Green River and Barren River populations (Compton 2023, pers. comm.).

The Green River mainstem plays a crucial role in the conservation of the Kentucky creekshell as it serves as the sole link between populations in the Green River and populations in the Barren River. Reintroduction efforts in this subunit will help preserve genetic diversity and facilitate the exchange of genes between populations in Unit 1a, which is occupied and begins at the confluence of Russell Creek near Greensburg, and populations in Unit 7, upstream from Unit 1a, downstream to the confluence of the Barren River near

Woodbury. For these reasons, this unit is essential for the conservation of the species.

Unit 2: Barren River

Unit 2 consists of 79.9 river miles (128.6 km) of Barren River in Butler, Warren, Allen, and Barren Counties, Kentucky, from the Barren River Lake dam in Barren and Allen Counties to the confluence of the Green River in Butler and Warren Counties. Approximately 79.4 river miles (127.8 km; 99 percent) of riparian lands that border the unit are in private ownership, and 0.46 stream mile (0.74 km; less than 1 percent) is in Federal (Barren River Lake; USACE) ownership. Unit 2 is considered currently unoccupied by the species and contains the physical or biological features 1 through 4, and 6 (See Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit includes alteration of the natural flow regime, alteration of instream substrate, urbanization of the landscape, impacts from invasive species, and dam, culvert and pipe, or other instream installations. Special management considerations or protection measures to reduce or alleviate the threats may include the use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of ground water and spring-fed streams and moderation of surface and ground water withdrawals to maintain natural flow regimes; use of best management practices when releasing water from reservoirs/impoundments; improved stormwater management; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; removal of instream barriers; and controlling impacts from invasive species (see Special Management Considerations or Protection).

This unit serves a critical role in conservation by providing the sole connection between populations in the Barren River tributaries and those in the Green River; thus, it is essential for the conservation of the Kentucky creekshell. The species was extirpated along the mainstem Barren River following the construction of Barren River Lock and Dam 1 in the 1930s, which created extensive unsuitable habitat for the Kentucky creekshell and its host fish, leading to the isolation and restriction of populations to the tributaries. However, the dam's removal in 2022 has

led to the rapid restoration of suitable habitat along the river.

An influence on the species in this unit is a small rock dam barrier between the Gasper River and the Drakes/Trammel Creek populations. While this barrier may impede gene flow, experts believe it may still allow for some connectivity, resembling a large riffle through which the banded sculpin (Kentucky creekshell host fish) could likely pass (Compton 2023, pers. comm.). To reestablish gene flow between the Barren River tributaries and the Green River populations, reintroductions of captive propagated individuals should be undertaken along this section.

Unit 3: Gasper River

Unit 3 consists of 52.8 river miles (85.0 km) of the Gasper River, Wigginton Creek, and Clear Fork Creek in Warren and Logan Counties, Kentucky. This unit includes Wigginton Creek from the headwaters near Rogers, Kentucky, to the confluence with Gasper River; Clear Fork Creek from the headwaters near US HWY 68 bridge to the confluence with Gasper River; and the Gasper River from headwaters near Auburn, Kentucky, to the confluence with the Barren River. All riparian lands that border the unit are in private ownership. Unit 3 is considered occupied by the species and contains the physical or biological features 1 through 5 (see Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit includes significant alteration of water quality and nutrient pollution; alteration of instream substrate, stream channels, and stream banks; impacts from invasive species; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of ground water and spring-fed streams; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; prevention of instream gravel mining; and controlling invasive species (see Special Management Considerations or Protection).

The mainstem Gasper River connects Wigginton Creek and Clear Fork Creek, and other historically occupied tributaries, with the mainstem Barren River. Including this unit protects occupied habitat for improved redundancy throughout the range and protects connections to other occupied habitat in these areas, all of which contributes to the conservation of the Kentucky creekshell.

Unit 4: Drakes Creek

Unit 4 consists of 55.1 river miles (88.7 km) of Drakes Creek, West Fork Drakes Creek, and Lick Creek in Warren and Simpson Counties, Kentucky. This unit includes Drakes Creek from the confluence of West Fork Drakes Creek and Middle Fork Drakes Creek downstream to the confluence with the Barren River near Bowling Green, Kentucky; West Fork Drakes Creek from the West Fork Drakes Creek Reservoir in Franklin, Kentucky, downstream to the confluence with Drakes Creek; and Lick Creek from the Scottsville Road bridge to the confluence with West Fork Drakes Creek. All of the riparian lands that border the unit are in private ownership. Unit 4 is considered occupied by the species and contains the physical or biological features 1 through 4 (see Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit include significant alteration of water quality and nutrient pollution; alteration of instream substrate, stream channels, and stream banks; impacts from invasive species; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of ground water and spring-fed streams; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; prevention of instream gravel mining; and controlling invasive species (see Special Management Considerations or Protection).

Unit 5: Trammel Creek

Unit 5 consists of 15.9 river miles (25.6 km) of Trammel Creek in Warren and Allen Counties, Kentucky, from the

confluence with John's Creek near Butlersville, Kentucky, downstream to its confluence with Drakes Creek. Unit 5 is considered occupied by the species and contains the physical or biological features 1 through 5 (see Summary of Essential Physical or Biological Features).

Threats identified within this unit include significant alteration of water quality and nutrient pollution; alteration of instream substrate, stream channels, and stream banks; impacts from invasive species; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of ground water and spring-fed streams; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; prevention of instream gravel mining; and controlling invasive species (see Special Management Considerations or Protection).

This stream is a major tributary of Drakes Creek, which allows for genetic exchange and redundancy in the Drakes Creek system and Barren River system.

Unit 6: Salt Lick Creek

Unit 6 consists of 19.1 river miles (30.7 km) of Salt Lick Creek in Monroe County, Kentucky, and Macon County, Tennessee, from the headwaters south of Red Boiling Springs, Tennessee, to the confluence with Long Fork, Kentucky. All of the riparian lands that border the unit are in private ownership. Unit 6 is considered occupied by the species and contains the physical or biological features 1 through 5 (see Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit include alteration of instream substrate, stream channels, and stream banks; land use activities that remove large areas of forested wetlands and riparian systems; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or

alleviate the threats may include best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of ground water and spring-fed streams; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; and prevention of instream gravel mining (see Special Management Considerations or Protection).

This unit is one of the most isolated units within the Kentucky creekshell range as it is the only known population upstream of Barren River Lake. This population is also the most recently discovered population, found in 2019 during a survey of the upper Barren River basin in Tennessee. This unit provides improved redundancy and potential representation across the species' range and could be used as a source population for future propagation efforts upstream of Barren River Lake, both of which will contribute to the conservation of the species.

Unit 7: Russell Creek

Unit 7 consists of 53.7 river miles (86.4 km) of Russell Creek in Green and Adair Counties, Kentucky, from the confluence with Cabin Fork Creek approximately 5 miles southeast of Columbia downstream to the confluence with the Green River south of Greensburg, Kentucky. All the riparian lands that border the unit are in private ownership. Unit 7 is considered occupied by the species and contains the physical or biological features 1 through 5 (see Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit include alteration of the natural flow regime; significant alteration of water quality and nutrient pollution; alteration of instream substrate, stream channels, and stream banks; urbanization of the landscape; land use activities that remove large areas of forested wetlands and riparian systems; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation;

protection of ground water and spring-fed streams; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; and prevention of instream gravel mining (see Special Management Considerations or Protection).

Experts believe the species can be found all the way to the confluence of the Green River, given the flow regimes and suitable substrates throughout the reach, although in likely very small numbers (Compton 2023, pers. comm.). This unit provides improved redundancy across the species' range as it is the only known population upstream of the mainstream Green River population. Additionally, this unit offers the shortest distance to connect with the mainstem Green River population to reestablish gene flow between these units and contributes to the conservation of the species.

Unit 8: Middle Nolin River

Unit 8 consists of a total of 64.4 river miles (103.6 km) with two subunits: one occupied and one unoccupied by the Kentucky creekshell. Subunit 8a (Nolin River) is occupied, while Subunit 8b (Round Stone Creek) is unoccupied.

Subunit 8a(Nolin River): Subunit 8a consists of 54.5 river miles (87.7 kilometers) of the Nolin River in Larue, Hardin, Grayson, and Hart Counties, Kentucky. Subunit 8a extends from the confluence of the north and south fork of the Nolin River west of Hodgenville, Kentucky, downstream to the confluence of Round Stone Creek south of Millerstown, Kentucky. Approximately 99 percent of the lands adjacent to subunit 8a are privately owned, and the remaining are Federal lands managed by the USACE for Nolin River Recreation Area and State lands of Kentucky State Department of Natural Resources. Subunit 8a is considered occupied by the species and contains the physical or biological features 1 through 4 (see Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit include alteration of the natural flow regime; alteration of instream substrate, stream channels, and stream banks; land use activities that remove large areas of forested wetlands and riparian systems; urbanization of the landscape; dam, culvert and pipe, or other instream installations that create barriers to movement for the Kentucky creekshell or its host fish; impacts from invasive species; changes and shifts in seasonal

temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include the use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of ground water and spring-fed streams and moderation of surface and ground water withdrawals to maintain natural flow regimes; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; removal of instream barriers; prevention of instream gravel mining; and controlling invasive species (see Special Management Considerations or Protection).

Subunit 8b (Round Stone Creek): Subunit 8b consists of 9.9 river miles (15.9 km) of Round Stone Creek in Hart County, Kentucky. Subunit 8b extends from the origins of the stream at Blue Hole Spring to the confluence with the mainstem Nolin River. Approximately 99 percent of riparian lands adjacent to subunit 8b are in private ownership. The rest (less than 0.5 percent) are managed by the USACE in the Nolin River Recreation Area. Subunit 8b is considered unoccupied by the species and contains the physical or biological features 1 through 4 (see Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit include alteration of the natural flow regime; alteration of instream substrate, stream channels, and stream banks; land use activities that remove large areas of forested wetlands and riparian systems; urbanization of the landscape; dam, culvert and pipe, or other instream installations that create barriers to movement for the Kentucky creekshell or their host fish; impacts from invasive species; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include the use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of ground water and spring-fed streams and moderation of surface and ground water withdrawals to

maintain natural flow regimes; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; removal of instream barriers; prevention of instream gravel mining; and controlling invasive species (see Special Management Considerations or Protection).

Round Stone Creek, a tributary in the lower section of the Nolin River may provide a location for reintroduction that would augment the overall Nolin River population. Relic shells have been found in the mouth of Round Stone Creek, and the stream's source is two springs, the species' associated habitats. Protection of spring-fed habitat in this tributary off the main stem channel could reduce the effects of potential catastrophic events. Experts believe this stream segment may still hold Kentucky creekshell (Compton 2023, pers. comm.), which would contribute genetic variation (representation) to the species, as well as improved redundancy in a degraded system. In addition, this stream is the most logical place for augmentation/reintroductions to begin for lower sections of the Nolin River, all of which would contribute to the conservation of the species. For these reasons, this unit is essential to the conservation of the species.

Unit 9: Upper Nolin River

Unit 9 consists of 23.9 river miles (38.5 km) of the Nolin River, South Fork Nolin River, and Walters Creek in Larue County, Kentucky. Approximately 21.3 stream miles (34.3 km; 89 percent) of riparian lands that border the unit are in private ownership, and 2.6 stream miles (4.2 km; 11 percent) are managed by the State Department of Natural Resources for the Kentucky Department of Agriculture. This unit includes the South Fork Nolin River from Buffalo, Kentucky, downstream to its confluence with the North Fork Nolin River and Walters Creek from its headwaters near J.E. Jones Road to its confluence with the South Fork Nolin Creek. Unit 9 is considered occupied by the species and contains the physical or biological features 1 through 5 (see Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit include significant alteration of the natural flow regime; alteration of water quality and nutrient pollution; alteration of instream substrate, stream channels, and stream banks; land use activities that remove large areas of forested wetlands and riparian systems; dam, culvert and pipe, or other instream installations that create barriers;

changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of ground water and spring-fed streams and moderation of surface and ground water withdrawals to maintain natural flow regimes; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; and the removal of instream barriers (see Special Management Considerations or Protection).

This unit is the only area in the upper Nolin River section known to have Kentucky creekshell populations. Given the consistent numbers of individuals found in this area, this section has been the source population for Nolin River stock and augmentation from propagated individuals and has been stocked at multiple locations to increase species abundance. This area is vitally important for the conservation of the species and future recovery of the Nolin River populations.

Unit 10: Rough River

Unit 10 consists of 49.1 stream miles (79.1 km) with two subunits; one occupied and one unoccupied. Subunit 10a (Rough River and Meeting Creek) is occupied, while Subunit 10b (Clifty Creek) is unoccupied.

Subunit 10a (Rough River and Meeting Creek): Subunit 10a consists of 37.5 river miles (60.4 km) of the Rough River in Breckinridge, Hardin, and Grayson Counties, Kentucky. This subunit includes the Rough River from the Hardinsburg Road bridge downstream to its confluence with Meeting Creek and Meeting Creek from its confluence with Petty Creek downstream to its confluence with Rough River. Approximately 96 percent of the lands adjacent to subunit 10a are privately owned; the remaining 4 percent are managed by the USACE for Rough River Lake. Subunit 10a is considered occupied by the species and contains the physical or biological features 1 through 4 (see Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit include alteration of the natural flow regime; significant alteration of water

quality and nutrient pollution from a variety of activities; alteration of instream substrate, stream channels, and stream banks from a variety of activities; land use activities that remove large areas of forested wetlands and riparian systems; dam, culvert and pipe, or other instream installations that create barriers to movement for the Kentucky creekshell, or their host fish; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of ground water and spring-fed streams; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; and removal of instream barriers. (see Special Management Considerations or Protection).

This unit has the highest number of individuals found (57) since 2003 including multiple age classes observed during the collections. It could be characterized as the most resilient unit among all 10 analytical units. Including this unit protects occupied habitat for improved redundancy throughout the species' range.

Subunit 10b (Clifty Creek): Subunit 10b consists of 11.6 river miles (18.7 km) of Clifty Creek in Grayson County, Kentucky, from Elizabethtown Road bridge downstream to Rough River Lake. Approximately 97 percent of the lands adjacent to subunit 10b are owned by private entities, while the remainder is managed by the USACE for Rough River Lake backwaters. Subunit 10b is considered unoccupied by the species and contains the physical or biological features 1 through 4 (see Summary of Essential Physical or Biological Features) essential to the conservation of the species.

Threats identified within this unit include alteration of the natural flow regime; significant alteration of water quality and nutrient pollution from a variety of activities; alteration of instream substrate, stream channels, and stream banks from a variety of activities; land use activities that remove large areas of forested wetlands and riparian systems; dam, culvert and pipe, or other instream installations that create barriers to movement for the Kentucky creekshell or their host fish; impacts

from invasive species; changes and shifts in seasonal temperature and precipitation patterns as a result of climate change; and other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water. Special management considerations or protection measures to reduce or alleviate the threats may include use of best management practices designed to reduce sedimentation, erosion, and bank destruction; protection of riparian corridors and woody vegetation; protection of ground water and spring-fed streams and moderation of surface and ground water withdrawals to maintain natural flow regimes; reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water; the removal of instream barriers; prevention of instream gravel mining; and controlling invasive species. (see Special Management Considerations or Protection).

Clifty Creek is a nearby tributary of the mainstem Rough River with suitable substrates and is heavily influenced by springs. Experts believe the species could be present in Clifty Creek and was likely there historically (Compton 2023, pers. comm.). Clifty Creek is the most promising location for reintroduction/augmentation in unit 9, which would add redundancy to the most resilient unit. It is essential for the conservation of the species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species (50 CFR 402.02).

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during formal consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation. Reinitiation of consultation is required and shall be requested by the Federal agency, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical

habitat designation does not apply to certain agency actions (e.g., land management plans issued by the Bureau of Land Management in certain circumstances).

Destruction or Adverse Modification of Critical Habitat

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires that our **Federal Register** documents “shall, to the maximum extent practicable also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify [critical] habitat, or may be affected by such designation.” Activities that may be affected by designation of critical habitat for the Kentucky creekshell include those that may affect the physical or biological features of the Kentucky creekshell’s critical habitat (see Physical or Biological Features Essential to the Conservation of the Species).

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic

impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the “2016 Policy”; 81 FR 7226, February 11, 2016), both of which were developed jointly with NMFS. We also refer to a 2008 Department of the Interior Solicitor’s opinion entitled “The Secretary’s Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act” (M–37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this

particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.”

The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.*, conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary section 4(b)(2) exclusion analysis.

Executive Order (E.O.) 14094 supplements and reaffirms E.O. 12866 and E.O. 13563 and directs Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a “significant regulatory action” and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of \$200 million or more in any given year (section 3(f)(1) as amended by E.O. 14094). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for Kentucky creekshell is likely to exceed the economically significant threshold.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Kentucky creekshell (IEc 2024, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographical areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.*, absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation.

The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units). Overall, the screening analysis assesses whether designation of critical habitat is likely to result in any additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our economic analysis of the proposed critical habitat designation for the Kentucky creekshell and is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of

the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Kentucky creekshell, first we identified, in the IEM dated March 26, 2024, probable incremental economic impacts associated with the following categories of activities: (1) Development along the Interstate 65 corridor; (2) installation of expanded broadband internet; (3) solar energy development; (4) pipeline maintenance projects; (5) bridge and road replacements and rehabilitations; and (6) water control activities. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat affects only activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the Kentucky creekshell is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If when we list the species, we also finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if the Federal action may affect critical habitat, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Kentucky creekshell's critical habitat. Because the designation of critical habitat for Kentucky creekshell is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the species

itself. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Kentucky creekshell totals approximately 544.6 river miles, of which 159.1 miles are considered to be unoccupied by the species. Critical habitat designation for the Kentucky creekshell is unlikely to generate costs exceeding \$200 million in a single year. Therefore, the rule is unlikely to meet the threshold for an economically significant rule, with regard to costs, under E.O. 12866. In fact, the total annual incremental cost of critical habitat designation for the Kentucky creekshell is anticipated to be a maximum of \$51,300 per year (2024 dollars). The total incremental costs of critical habitat designation for the Kentucky creekshell are anticipated to be between approximately \$438,200 to \$513,100 over the next 10 years, or approximately \$43,800 to \$51,300 annually.

We have determined that, in occupied Kentucky creekshell critical habitat, costs are likely to be limited to administrative costs. This is primarily because, regardless of whether critical habitat is designated, all projects with a Federal nexus would be subject to section 7 requirements, and conservation efforts requested to avoid jeopardizing the continued existence of the species would be substantially similar to those that would be recommended to avoid adverse modification. In addition, in both occupied and unoccupied habitat for Kentucky creekshell, conservation efforts for other listed species with ranges and/or proposed critical habitat areas that overlap the Kentucky creekshell proposed designation are likely to provide protections to the Kentucky creekshell, even absent critical habitat designation for the Kentucky creekshell. Of the more than 540 miles of proposed designated critical habitat, 13 federally listed mussel species' ranges overlap with Kentucky creekshell: between 33 miles and 208 miles for each species. Additionally, three critical habitat units for federally listed mussel species overlap with the Kentucky creekshell's critical habitat: between 73 miles and 156 miles for each species. Total overlap across all species is 208 miles (38%) and the majority of these overlaps occur

in the mainstem Green River and mainstem Barren River. These species have similar habitat requirements to the Kentucky creekshell.

The incremental costs associated with section 7 consultations for the Kentucky creekshell in unoccupied habitat are likely to include administrative costs resulting from consultations as well as costs associated with potential additional conservation efforts. This is primarily because activities with a Federal nexus in unoccupied areas would not be subject to section 7 consultation requirements for the Kentucky creekshell absent the designation of critical habitat because the species is not present. Depending on the action and the level of its impact on the habitat, the action agency or project proponent may need to undertake conservation activities, which may have an associated cost.

We are soliciting data and comments from the public on the economic analysis discussed above. During the development of a final designation, we will consider the information presented in the economic analysis and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2), our implementing regulations at 50 CFR 424.19, and the 2016 Policy. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (e.g., a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of “critical habitat.” However, we must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires us to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, the Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an

assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for Kentucky creekshell are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed

above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as safe harbor agreements (SHAs), candidate conservation agreements with assurances (CCAAs) or “conservation benefit agreement” or “conservation agreement” (CBAs) (CBAs are a new type of agreement replacing SHAs and CCAAs in use after April 2024 (89 FR 26070; April 12, 2024)) or HCPs, or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

Summary of Exclusions Considered Under 4(b)(2) of the Act

In preparing this proposal, we have determined that no HCPs or other management plans for the Kentucky creekshell currently exist, and the proposed designation does not include any Tribal lands or trust resources or any lands for which designation would have any economic or national security impacts. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation, and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources.

However, if through the public comment period we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Executive Order 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 will review all significant rules. OIRA has determined that this rule is not significant.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996

(SBREFA; 5 U.S.C. 801 et seq.), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

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 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 agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, 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.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat.

Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated.

Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use— *Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects “to the extent permitted by law” when undertaking actions identified as significant energy actions (66 FR 28355; May 22, 2001). E.O. 13211 defines a “significant energy action” as an action that (i) is a significant regulatory action under E.O. 12866 or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a significant regulatory action under E.O. 12866 or E.O. 14094 (88 FR 21879; April 11, 2023). Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

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.), we make the following findings:

- (1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that

would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement

programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100 million or more (adjusted annually for inflation) in any year; that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. Small governments will be affected only to the extent that any Federal programs issuing Federal funds or permits, or conducting other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a small government agency plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Kentucky creekshell in a takings implications assessment. The Act does not authorize the Services to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the Kentucky creekshell, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource

agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal Government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

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, May 4,

1994), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), the President's memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes and Alaska Native Corporations (ANCs) 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. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the Kentucky creekshell, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Kentucky Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Kentucky Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to 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. In § 17.11, amend paragraph (h) in the List of Endangered and Threatened Wildlife by adding an entry for “Creekshell, Kentucky” in alphabetical order under CLAMS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* CLAMS	*	*	*	*
* Creekshell, Kentucky	* <i>Leaunio ortmanni</i>	* Wherever found	* E	* [Federal Register citation when published as a final rule]; 50 CFR 17.95(f). ^{CH}
*	*	*	*	*

■ 3. In § 17.95, amend paragraph (f) by adding an entry for “Kentucky Creekshell (*Leaunio ortmanni*)” after the entry for “Canoe Creek Clubshell (*Pleurobema atearnii*)” to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(f) * * *
* * * * *

Kentucky Creekshell (*Leaunio ortmanni*)

(1) Critical habitat units are depicted for Adair, Allen, Barren, Breckinridge,

Butler, Edmonson, Grayson, Green, Hardin, Hart, Larue, Logan, Monroe, Simpson, and Warren Counties, Kentucky, and Macon County, Tennessee, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Kentucky creekshell consist of the following components:

(i) Water quantity and quality necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages, including (but not limited to) water conditions in the stream that are

cool; are well-oxygenated with no evidence of excessive sediments or suspended solids, salinity, ammonia, nutrients, pesticides, or herbicides; and have a stream flow and pattern consistent with natural flow regimes. Spring-influenced river sections are important: Most Kentucky creekshell populations are associated with this habitat type, and it is also the preferred habitat type for the host fish, the banded sculpin (*Cottus caroliniae*).

(ii) Suitable substrates and connected instream habitats characterized by

geomorphically stable stream channels and banks (*i.e.*, channels that maintain lateral dimensions, longitudinal profiles, and sinuosity patterns over time without an aggrading or degrading bed elevation); stable riffle-run-pool habitats that provide flow refuges consisting of predominantly silt-free, stable coarse sand, gravel, and cobble substrates.

(iii) Adequate food availability for Kentucky creekshell including (but not limited to): suspended phytoplankton, zooplankton, rotifers, protozoans, detritus, and dissolved organic matter from the water column or sediments.

(iv) Habitat conditions that support the presence and abundance of banded sculpin, the host fish necessary for Kentucky creekshell recruitment, as well as the actual presence and abundance of the banded sculpin in the habitat.

(v) Connected instream habitats without barriers such as dams and perched or undersized culverts to provide suitable lotic rather than lentic habitat; access to quality habitat for multiple life stages of Kentucky creekshell; access for host fish movement, which in turn, may influence Kentucky creekshell distribution and provide genetic exchange for both species and recolonization of Kentucky creekshell.

(vi) Appropriate abundance, density, and distribution of mussel beds (aggregations of freshwater mussels) such that local stochastic events do not necessarily eliminate the bed(s), allowing the mussel beds and the overall local population within a stream reach to recover from any single event and for resilient populations.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other

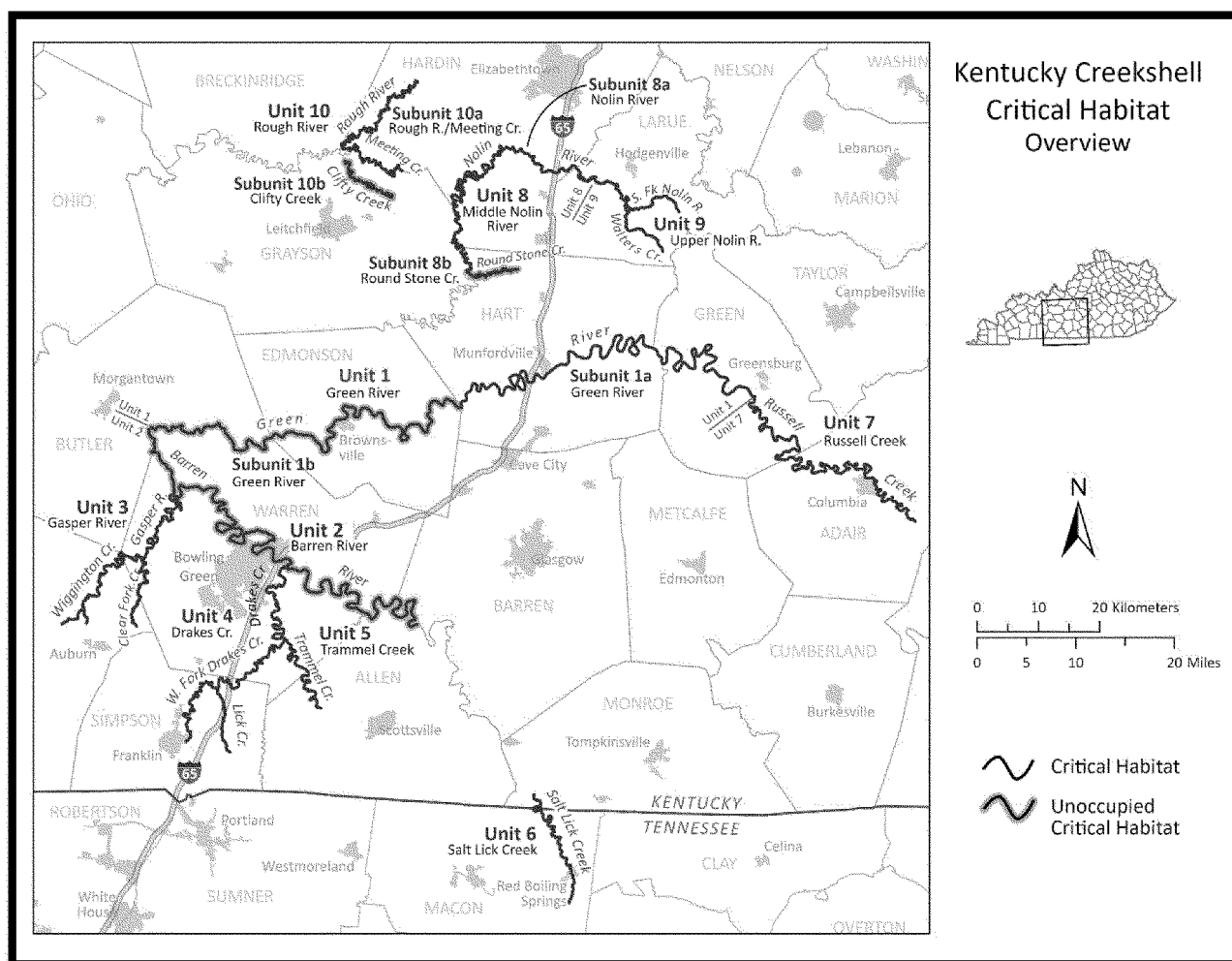
paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) Data layers defining map units were created using ArcGIS Profession version 3.2.2 (Environmental Systems Research Institute, Inc.), a geographic information systems program on a base of USA Topo Maps. Critical habitat units were then mapped by delineating stream segments and polygons from the National Hydrography Database high-resolution flow lines and areas with USA Contiguous Albers Equal Area Conic USGS projection and NAD83 datum. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation.

(5) Index map follows:

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Figure 1 to Kentucky creekshell (*Leaunio ortmanni*) paragraph (5)



(6) Unit 1: Green River; Green, Hart, Edmonson, Butler, and Warren Counties, Kentucky.

(i) Unit 1 consists of 130.7 stream miles (210.4 km) in Green, Hart, Edmonson, Butler, and Warren Counties, Kentucky. The unit includes both occupied and unoccupied subunits.

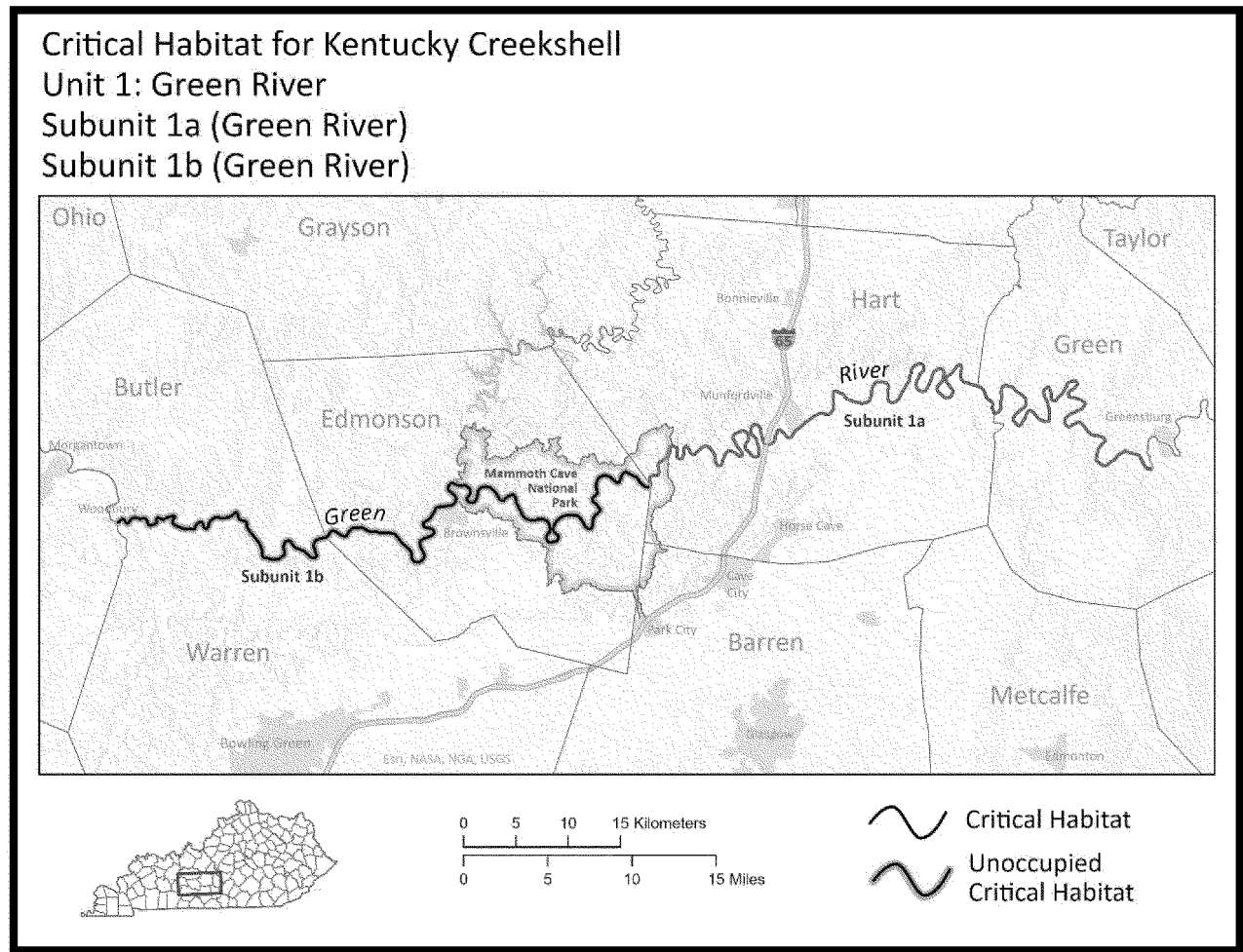
(A) Subunit 1a (Green River) is approximately 73.0 stream miles (117.5 km) and considered occupied habitat. Nearly all (approximately 99 percent) of the lands adjacent to subunit 1a are privately owned. The remaining lands adjacent to this subunit (one percent) are federally or State owned.

(B) Subunit 1b (Green River) is approximately 57.7 stream miles (92.9

km) and considered unoccupied habitat. Approximately 87 percent of the lands adjacent to subunit 1b are privately owned. The remaining 13 percent is federally owned.

(ii) Map of Unit 1 follows:

Figure 2 to Kentucky creekshell (*Leaunio ortmanni*) paragraph (6)(ii)



(7) Unit 2: Barren River; Butler, Warren, Allen, and Barren Counties, Kentucky.

(i) Unit 2 consists of 79.9 stream miles (128.6 km) of Barren River in Butler, Warren, Allen, and Barren Counties,

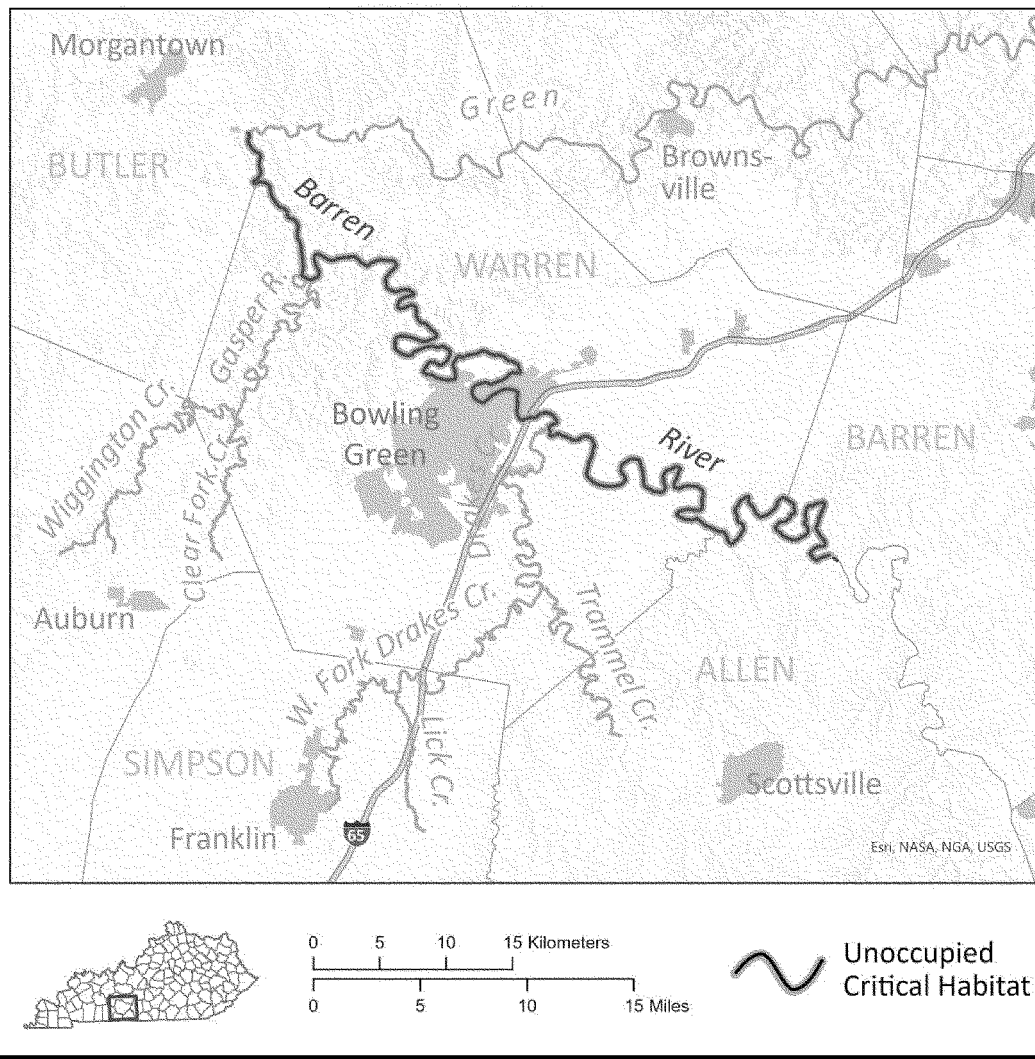
Kentucky. Approximately 79.4 stream miles (127.8 km; 99 percent) of riparian lands that border the unit is private ownership, and 0.46 stream miles (0.74 km; less than 1 percent) are federally

owned and managed. Unit 2 is unoccupied by the species.

(ii) Map of Unit 2 follows:

Figure 3 to Kentucky creekshell (*Leaunio ortmanni*) paragraph (7)(ii)

Critical Habitat for Kentucky Creekshell Unit 2: Barren River



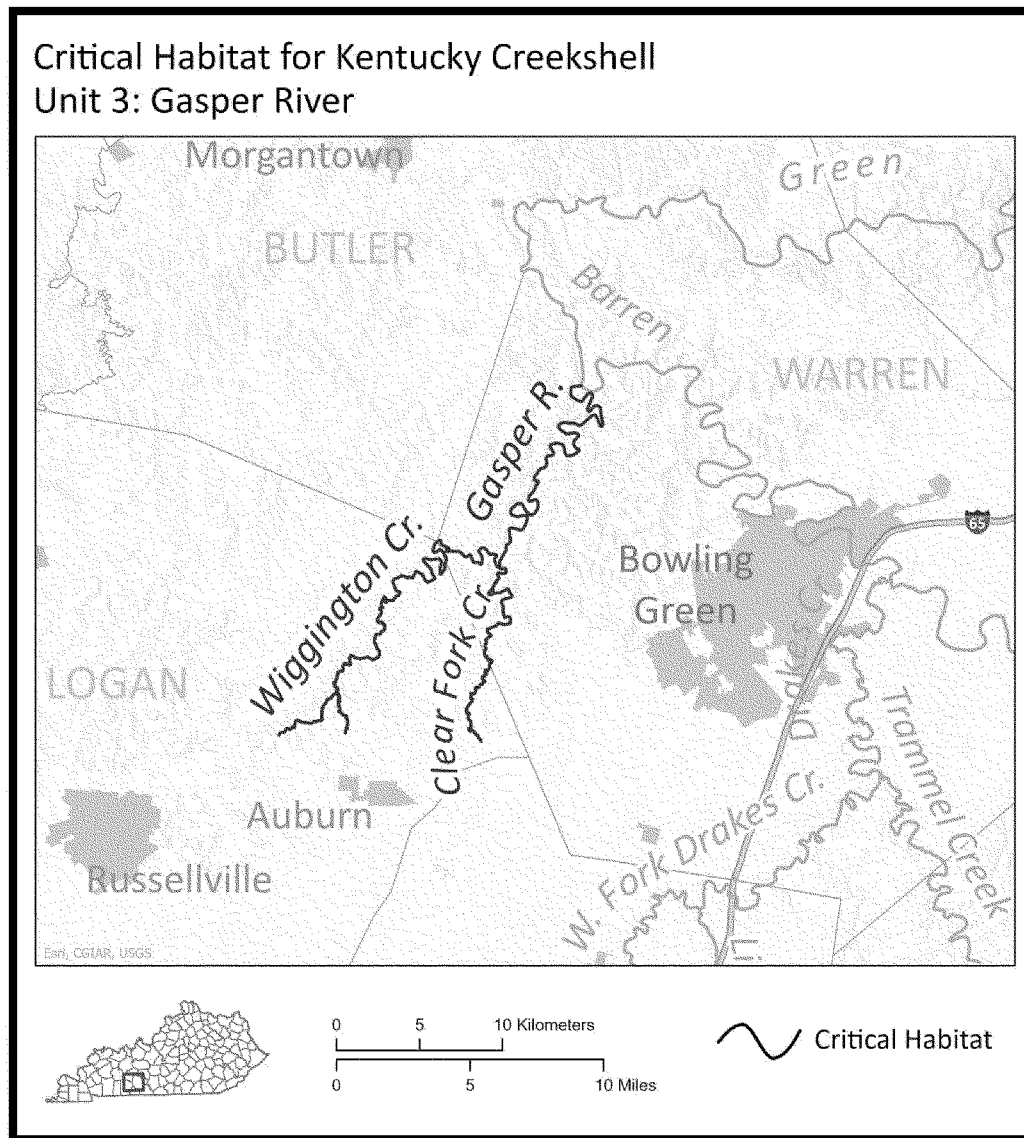
(8) Unit 3: Gasper River; Warren and Logan Counties, Kentucky.

(i) Unit 3 consists of 52.8 stream miles (85.0 km) of the Gasper River, Wigginton Creek, and Clear Fork Creek

in Warren and Logan Counties, Kentucky. All the riparian lands that border the unit are in private ownership. Unit 3 is occupied by the species.

(ii) Map of Unit 3 follows:

Figure 4 to Kentucky creekshell (*Leaunio ortmanni*) paragraph (8)(ii)



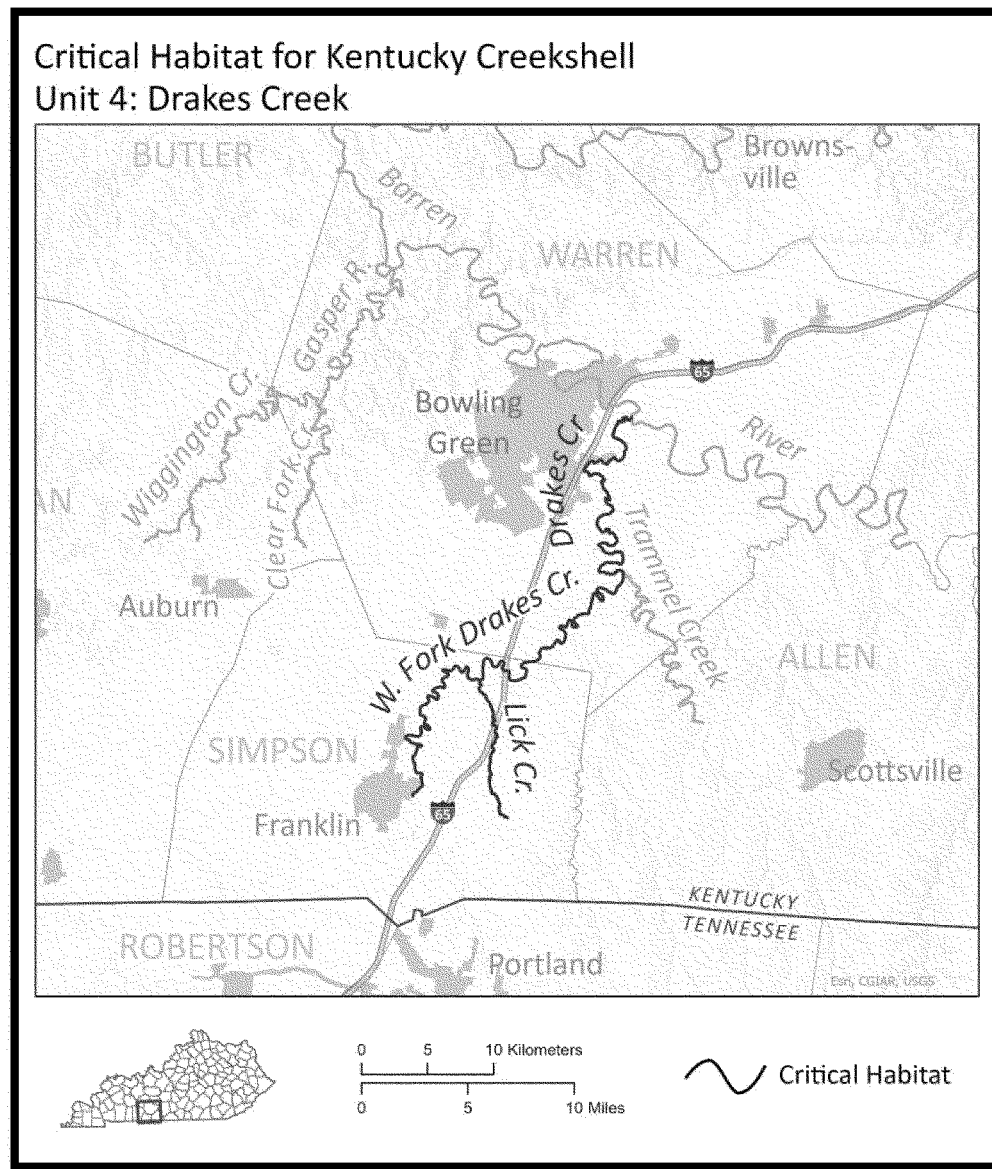
(9) Unit 4: Drakes Creek; Warren and Simpson Counties, Kentucky.

(i) Unit 4 consists of 55.1 stream miles (88.7 km) of Drakes Creek, West Fork Drakes Creek, and Lick Creek in Warren

and Simpson Counties, Kentucky. All of the riparian lands that border the unit are in private ownership. Unit 4 is occupied by the species.

(ii) Map of Unit 4 follows:

Figure 5 to Kentucky creekshell (*Leaunio ortmanni*) paragraph (9)(ii)



(10) Unit 5: Trammel Creek; Warren and Allen Counties, Kentucky.

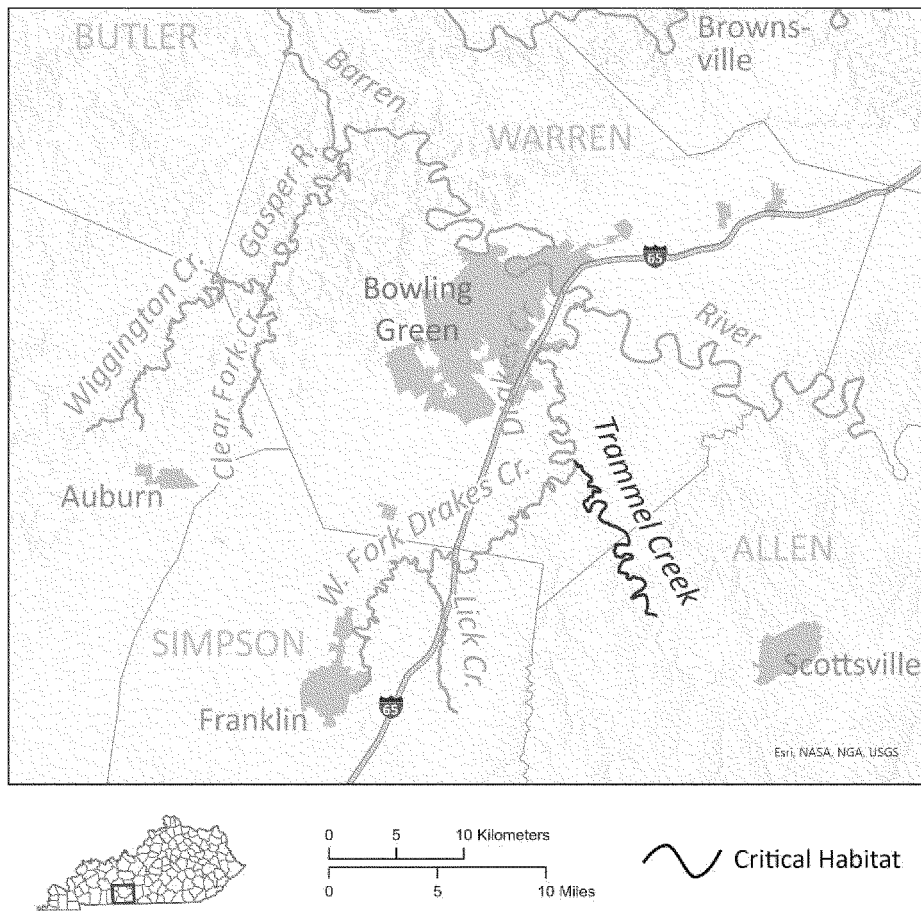
(i) Unit 5 consists of 15.9 stream miles (25.6 km) of Trammel Creek in Warren

and Allen Counties, Kentucky. All of the riparian lands that border the unit are in private ownership. Unit 5 is occupied by the species.

(ii) Map of Unit 5 follows:

Figure 6 to Kentucky creekshell (*Leaunio ortmanni*) paragraph (10)(ii)

Critical Habitat for Kentucky Creekshell
Unit 5: Trammel Creek



(11) Unit 6: Salt Lick Creek; Monroe County, Kentucky, and Macon County, Tennessee.

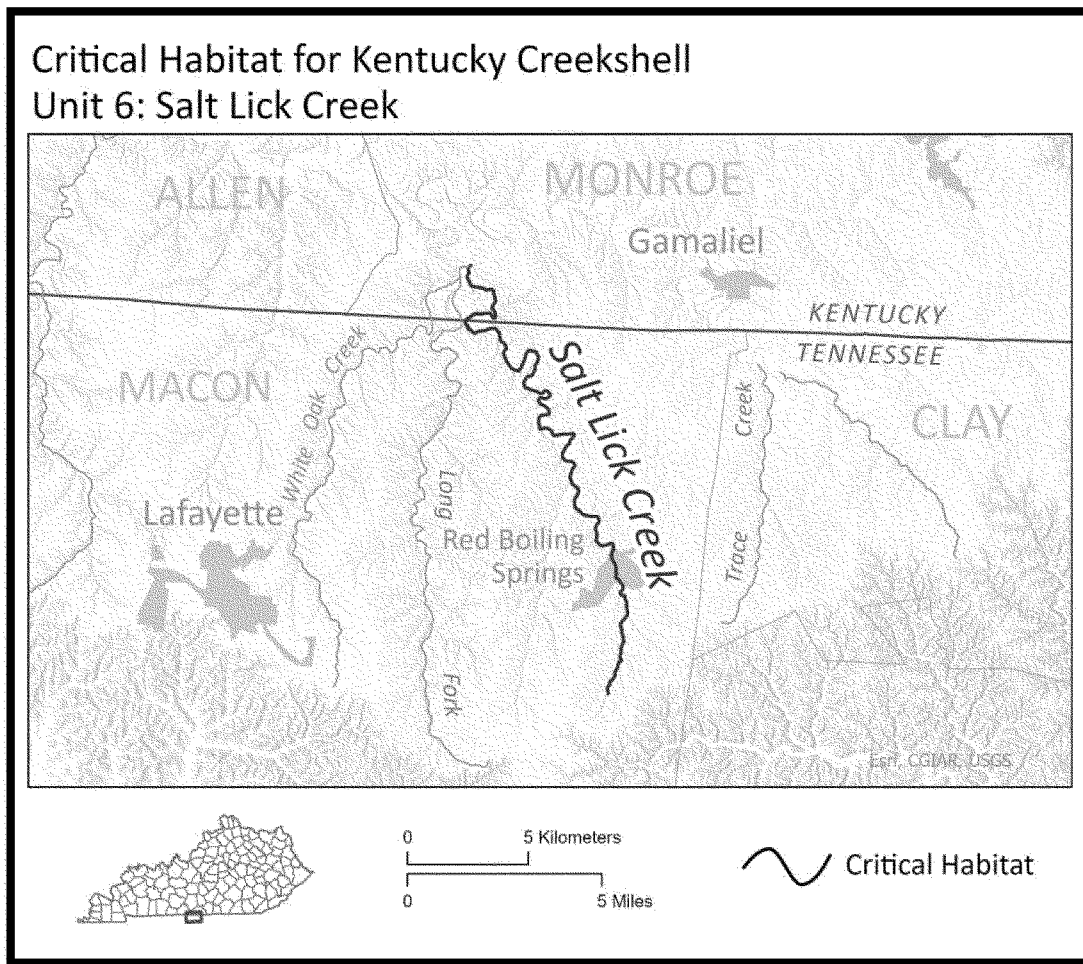
(i) Unit 6 consists of 19.1 stream miles (30.7 km) of Salt Lick Creek in Monroe

County, Kentucky, and Macon County, Tennessee. All of the riparian lands that border the unit are private ownership.

Unit 6 is occupied by the species.

(ii) Map of Unit 6 follows:

Figure 7 to Kentucky creekshell (*Leaunio ortmanni*) paragraph (11)(ii)



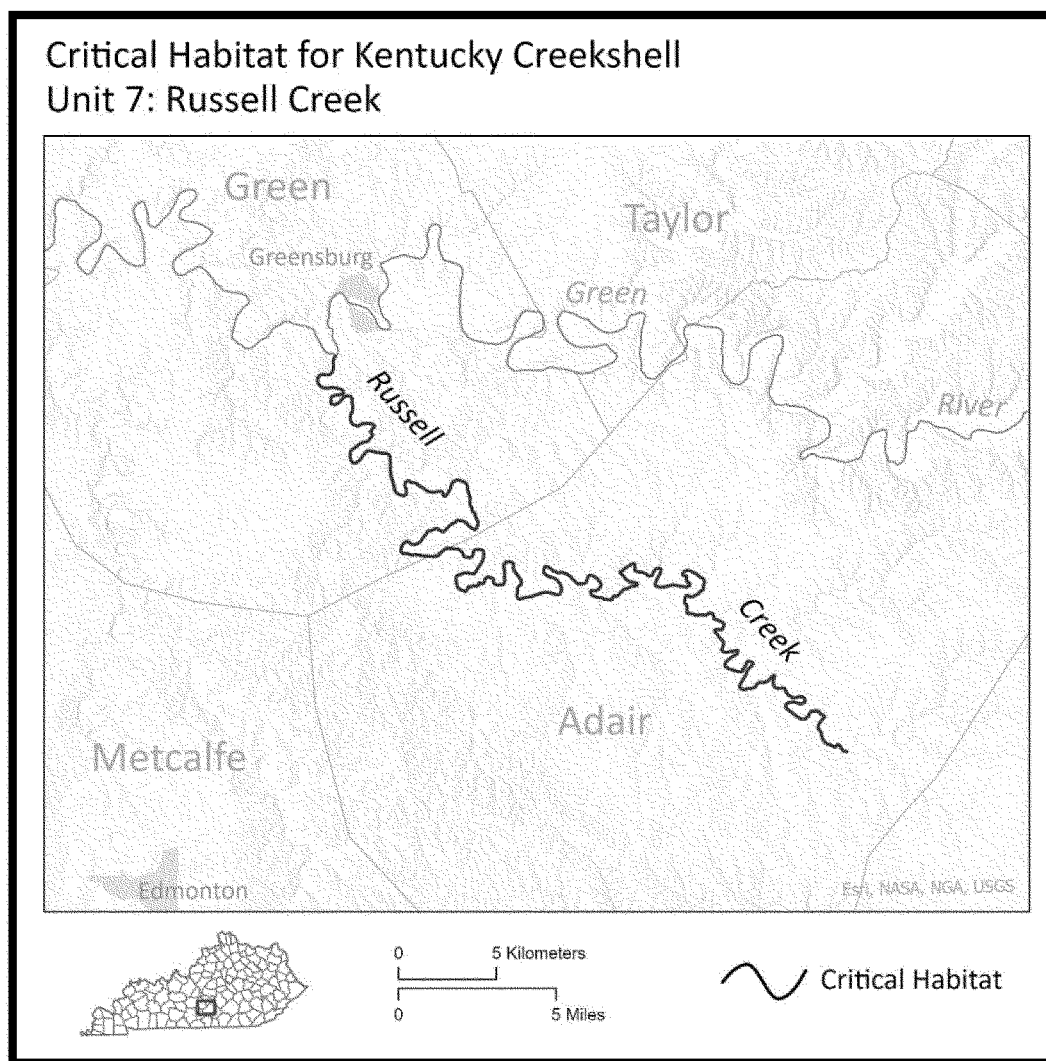
(12) Unit 7: Russell Creek; Green and Adair Counties, Kentucky.

(i) Unit 7 consists of 53.7 stream miles (86.4 km) of Russell Creek in Green and

Adair Counties, Kentucky. All of the riparian lands that border the unit are in private ownership. Unit 7 is occupied by the species.

(ii) Map of Unit 7 follows:

Figure 8 to Kentucky creekshell (*Leaunio ortmanni*) paragraph (12)(ii)



(13) Unit 8: Middle Nolin River; Larue, Hardin, Hart, and Grayson Counties, Kentucky.

(i) Unit 8 consists of 64.4 stream miles (103.6 km) in Larue, Hardin, Hart, and Grayson Counties, Kentucky. The unit includes both occupied and unoccupied subunits.

(A) Subunit 8a (Nolin River) is approximately 54.5 stream miles (87.7

km) and considered occupied habitat. Nearly all (approximately 99 percent) of the lands adjacent to subunit 8a are privately owned. The remaining lands adjacent to this subunit (one percent) are federally owned and managed.

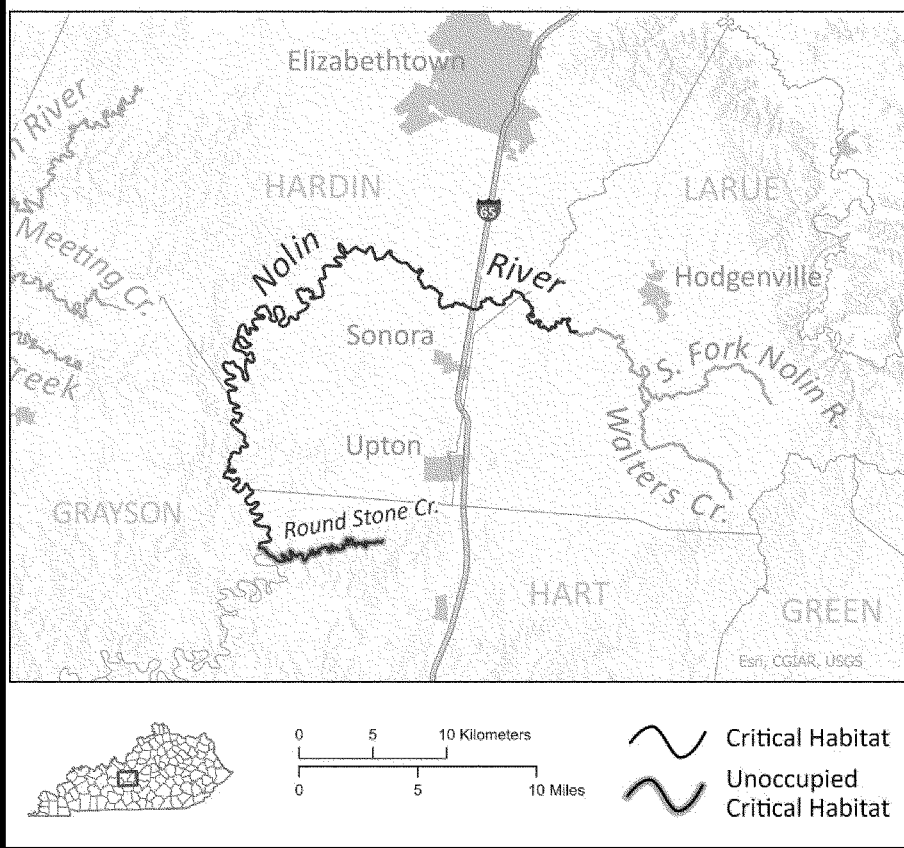
(B) Subunit 8b (Round Stone Creek) is approximately 9.8 stream miles (15.9 km) and considered unoccupied habitat.

Approximately 99 percent of the lands adjacent to subunit 8b are owned by private entities. The other 1 percent is federally owned and managed.

(ii) Map of Unit 8 follows:

Figure 9 to Kentucky creekshell (*Leaunio ortmanni*) paragraph (13)(ii)

Critical Habitat for Kentucky Creekshell
 Unit 8: Middle Nolin River
 Subunit 8a (Nolin River)
 Subunit 8b (Round Stone Creek)



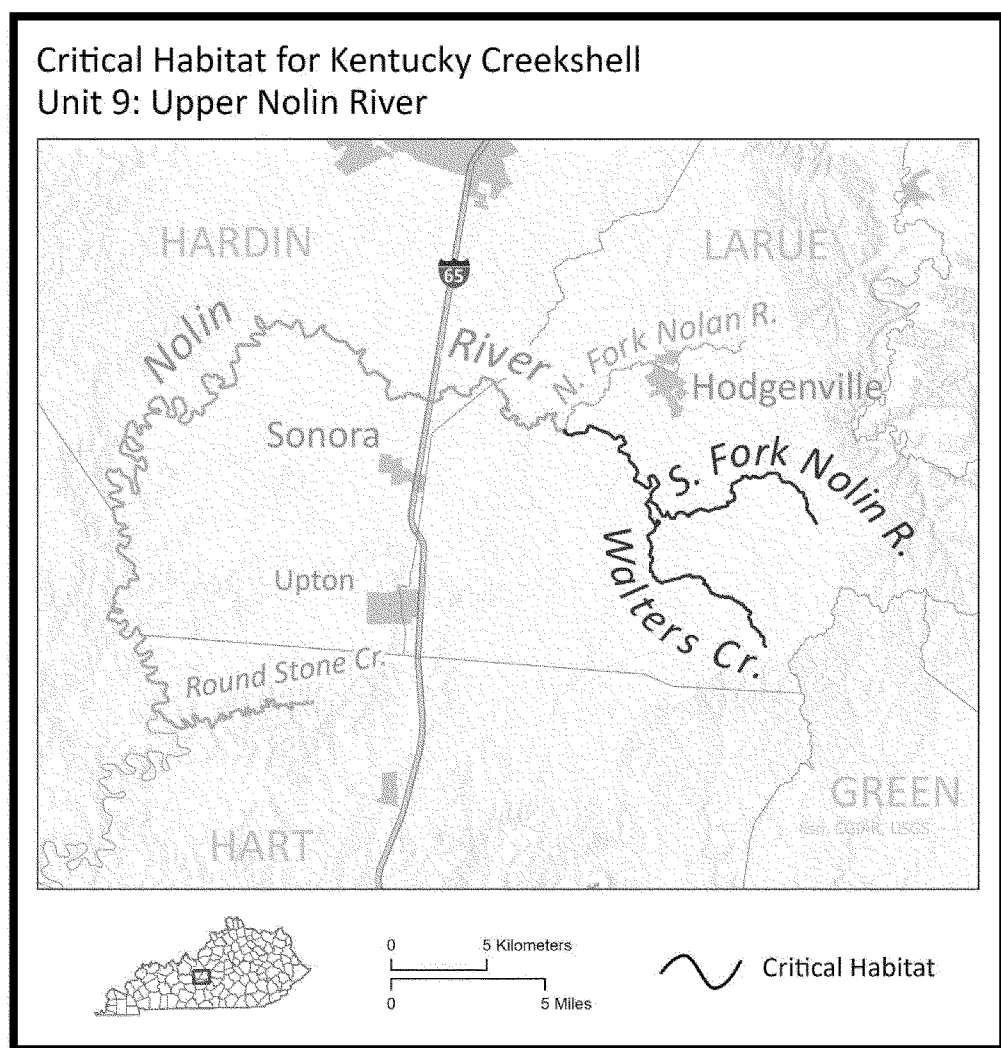
(14) Unit 9: Upper Nolin River; Larue County, Kentucky.

(i) Unit 9 consists of 23.9 stream miles (38.5 km) of the South Fork Nolin River and Walters Creek in Larue County,

Kentucky. Approximately 21.3 stream miles (34.3 km; 89 percent) of riparian lands that border the unit are in private ownership, and 2.6 stream miles (4.2 km; 11 percent) are State owned and

managed. Unit 9 is occupied by the species.

(ii) Map of Unit 9 follows:
 Figure 10 to Kentucky creekshell
(Leaunio ortmanni) paragraph (14)(ii)



(15) Unit 10: Rough River; Breckinridge, Hardin, and Grayson Counties, Kentucky.

(i) Unit 10 consists of 49.1 stream miles (79.0 km) in Breckinridge, Hardin, and Grayson Counties, Kentucky. The unit includes both occupied and unoccupied subunits.

(A) Subunit 10a (Rough River and Meeting Creek) is approximately 37.5

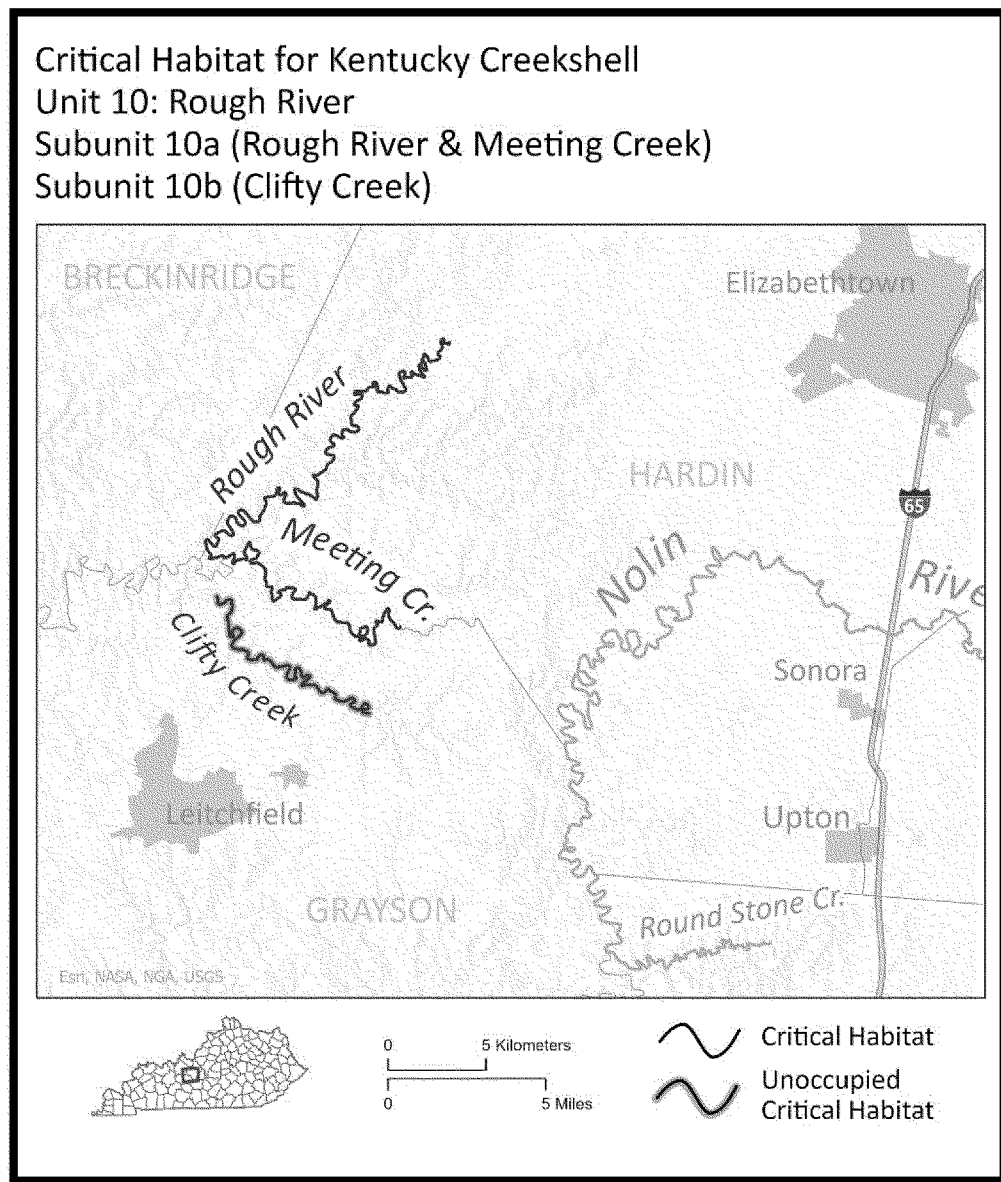
stream miles (60.4 km) and considered occupied habitat. Approximately 96 percent of the lands adjacent to subunit 10a are privately owned. The remaining lands adjacent to this subunit (four percent) are federally owned and managed.

(B) Subunit 10b (Clifty Creek) is approximately 11.6 stream miles (18.7

km) and considered unoccupied habitat. Approximately 97 percent of the lands adjacent to subunit 10b are owned by private entities. The other 3 percent is federally owned and managed.

(ii) Map of Unit 10 follows:

Figure 11 to Kentucky creekshell (*Leaunio ortmanni*) paragraph (15)(ii)



* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024-20157 Filed 9-16-24; 8:45 am]

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Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards: Seat Belt Assembly Anchorages;
Incorporation by Reference; Final Rule

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA–2024–0025]

RIN 2127–AL05

Federal Motor Vehicle Safety Standards: Seat Belt Assembly Anchorages; Incorporation by Reference

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends the procedures for testing the strength of seat belt anchorages in Federal Motor Vehicle Safety Standard No. 210, “Seat Belt Assembly Anchorages.” The amendments clarify the positioning of the test device currently specified in the standard and add an optional test device (and corresponding test procedures) as a certification alternative. These amendments respond to an earlier court decision which found that the regulatory test procedures do not provide manufacturers adequate notice of how NHTSA would conduct the test.

DATES:

Effective date: This rule is effective October 17, 2024.

Incorporation by reference date: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 17, 2024.

Compliance date: The compliance date is September 1, 2027, with optional early compliance permitted. Multi-stage manufacturers and alterers would have an additional year to comply.

Petition for reconsideration: Petitions for reconsideration of this final rule must be received not later than November 1, 2024.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Note that all petitions received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business

information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a submission containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512). Please see further information in the Regulatory Notices and Analyses section of this preamble.

Privacy Act: The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Mr. Joshua McNeil, Office of Crashworthiness Standards, Telephone: (202) 366–7612; Email: Joshua.McNeil@dot.gov; Facsimile: (202) 493–2739. For legal issues, you may contact Mr. John Piazza, Office of Chief Counsel, Telephone: (202) 366–2992; Email: John.Piazza@dot.gov; Facsimile: (202) 366–3820. The address of these officials is: the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

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I. Executive Summary

Federal Motor Vehicle Safety Standard (FMVSS) No. 210, “Seat belt assembly anchorages,” establishes requirements for seat belt anchorages, which are the part of the vehicle that transfers seat belt loads to the vehicle structure. The standard sets out a variety of requirements for seat belt

anchorage, including performance requirements that ensure that the anchorages are strong enough to remain attached to the vehicle structure in a crash. The standard requires seat belt anchorages to withstand specified forces when tested according to the test procedures specified in the standard. The test forces are applied to the seat belts by test devices referred to as “body blocks,” which essentially take the place of an occupant. The body blocks are placed on the seat, secured with the seat belt, and attached to a force actuator that applies the specified test forces. The standard has included the anchorage strength requirements and body blocks since its inception in 1967. International regulations and industry consensus standards also contain seat belt anchorage strength requirements, which, although different from FMVSS No. 210 in various ways, generally mirror FMVSS No. 210 by specifying the use of body blocks similar to the FMVSS No. 210 body blocks.

This final rule amends the test procedures for the standard’s seat belt anchorages strength requirements. The current standard specifies a variety of aspects of the test procedure, but does not specify precisely where on the vehicle seat NHTSA will position the body blocks at the start of the test before the test loads are applied. This lack of specificity has, in the past, resulted in manufacturers conducting compliance testing differently from NHTSA. As a result, in the late 1990s the U.S. Court of Appeals for the District of Columbia Circuit ruled that NHTSA had failed to provide adequate notice of where on the vehicle seat NHTSA would position the body block. As a result, NHTSA was not able to compel the recall of the vehicles at issue in that case, which had failed the anchorage strength test when tested by NHTSA.

To address the issues identified by the court, and to make the seat belt anchorage strength test easier to carry out, in 2012 NHTSA published a notice of proposed rulemaking (NPRM) (77 FR 19155, March 30, 2012) that proposed replacing the body blocks with a new test device referred to as the Force Application Device (FAD). The FAD consists of an upper torso portion and a pelvic portion hinged together to form a one-piece device that roughly resembles the human form. NHTSA developed two different size versions of the FAD, referred to as FAD1 and FAD2. The test procedure proposed for the FAD addressed the issues about the positioning of the test device that had been identified by the Court of Appeals. NHTSA also explained in the NPRM that it believed that the FAD would be

easier to use than the body blocks. NHTSA developed the FAD independently and it has not yet been adopted outside of the United States.

The agency received a variety of comments in response to the NPRM. Vehicle manufacturers and seat suppliers stated several concerns with the FAD and the corresponding seating procedure, including the design and performance of the FAD, lack of knowledge or experience testing with the FAD, harmonization, and cost.

After considering these comments, NHTSA decided to evaluate the feasibility of retaining the body blocks and refining the regulatory test procedure to specify where on the seat NHTSA would position the body blocks. In 2015, NHTSA published a supplemental notice of proposed rulemaking (SNPRM) (80 FR 11148, March 2, 2015) in which it explained that it was considering specifying, either instead of or as an alternative to the FAD, a three-dimensional zone(s) with respect to the seat in which the body blocks would be positioned. The SNPRM explained that this contemplated procedure using zones was modeled after a similar procedure in FMVSS No. 222, School bus passenger seating and crash protection. By refining the current test procedure to include these zones, NHTSA stated that it intended the standard clarify how the agency will position the body blocks. The agency also stated that it had initiated research to develop the zones and that the research would evaluate the zone concept across different vehicle types and seat configurations and establish appropriate zone boundaries to ensure that the procedure is feasible and practicable for all vehicles. In 2018, NHTSA published a notice of availability (83 FR 16280, April 16, 2018) and docketed reports and data on the additional research it had completed on the development of the body block zones, as well as the FAD.

NHTSA received a variety of comments in response to the SNPRM. These included, among other things, concerns with whether the zones would work for all vehicles and vehicle types (especially for heavy-duty trucks and buses, which have different seats from passenger vehicles); the size of the zones and potential variability in the test results; and the need for existing vehicle platforms to be re-certified using the new zones. Several SNPRM commenters supported the continued use of the body blocks in addition to the option of using the FAD.

Summary of Final Rule

The final rule amends FMVSS No. 210 to specify zones for the placement of the body blocks and to include the FAD as an alternative compliance option (at the manufacturer’s choice).

Placement Zones for the Body Blocks

The finalized zones are the zones specified in the research report NHTSA docketed in 2018. NHTSA’s testing shows that the zones are valid for a wide range of vehicles, including medium- and heavy-duty vehicles. The zones are based on data from a range of different vehicles and were mathematically expanded to accommodate an even wider range of vehicles. To ensure that the zones would apply to a wide variety of vehicles and seats, the agency’s research considered the factors identified by the SNPRM commenters, as well as other factors that may affect body block position.

While the zones are large enough to account for a variety of vehicles and seat types, they are still relatively modest in size, and there is no data or evidence that suggests that there will be large variability in force vectors or test results. For the same reasons, we have not seen any data or evidence to suggest that testing to the final zones will result in different compliance outcomes compared to the existing test procedure. The current test procedure has no constraints on the positioning of the body blocks. The refined test procedure in this final rule establishes allowable zones for the positioning of the body blocks, which have been used for testing anchorage strength since the standard’s inception in 1967. Use of the body blocks within the allowable zones reduces the set of permissible test conditions, which also reduces the variability of the test.

Force Application Device

The final rule specifies the FAD as an optional alternative to the body blocks that manufacturers may choose to certify compliance. Manufacturers that prefer to certify using the body blocks may continue to do so. Design drawings of the FAD1 and FAD2 are incorporated by reference into the final rule and are sufficiently detailed to allow manufacturers to fabricate the devices. In addition to the two-dimensional engineering drawings incorporated by reference in the final rule, NHTSA is making three-dimensional design drawings available for reference purposes (e.g., to facilitate fabrication). In response to comments, the final rule also clarifies some of the proposed

regulatory text. NHTSA estimates the cost of each FAD to be approximately \$8,000.

We are providing a two-year lead time for the use of the body blocks and the FAD as established by this final rule. Providing vehicle manufacturers the option to continue to use the current body blocks or the FAD for certification should alleviate the lead time concerns expressed by commenters to the NPRM.

This final rule is not significant and so was not reviewed by the Office of Management and Budget under E.O. 12866.

II. Background

A. FMVSS No. 210

FMVSS No. 210, “Seat belt assembly anchorages,” applies to passenger cars, multipurpose passenger vehicles (“MPVs”), trucks, and buses of all weights. The standard establishes requirements for seat belt assembly anchorages (“seat belt anchorages”). Seat belt anchorages are any component, other than the webbing or straps,

involved in transferring seat belt loads to the vehicle structure, including, but not limited to, the attachment hardware, seat frames, seat pedestals, the vehicle structure itself, and any part of the vehicle whose failure causes separation of the belt from the vehicle structure. The standard’s requirements ensure that the anchorages are properly located for effective occupant restraint and are sufficiently strong so that they remain attached to the vehicle structure in a crash. As to the latter, the standard requires seat belt anchorages to withstand specified forces when tested according to the procedures specified in the standard. This final rule amends the test procedures for the standard’s seat belt anchorage strength requirements.

Since its inception in 1967, FMVSS No. 210 has included anchorage strength requirements, tested with body blocks.¹ Under the standard, seat belt anchorages for lap-belt only belts (referred to as “Type 1” belts²) must withstand a 22,241 Newton (N) (5,000 pound (lb)) force. Seat belt anchorages

for combination lap/shoulder belts (“Type 2 belts”³) must withstand a 13,345 Newton (N) (3,000 lb) force applied to the lap belt portion of the seat belt assembly simultaneously with a 13,345 N force applied to the torso (*i.e.*, shoulder) belt portion of the seat belt assembly (“test force” or “test load”). Because Type 2 belts are generally required for most seating positions and vehicle types, for ease of explanation the preamble discussion will assume that testing is for a Type 2 belt unless otherwise noted. These forces are applied to the lap belt portion of the belt by a pelvic body block and the torso portion of the belt by a torso body block. The torso and pelvic body blocks are separate test devices that are positioned at each designated seating position tested. The standard specifies the shape, dimensions, and the covering (foam) of the body blocks, but otherwise, the construction of the body block may vary.⁴ See Figure 1 for depictions of the torso and pelvic body blocks.

Figure 1 – Body Blocks



¹ See 32 FR 2408, 2415–2416 (February 3, 1967) (Initial Federal Motor Vehicle Safety Standards).

² See 49 CFR 571.210, S3 (definition of “Type 1 seat belt assembly”).

³ See 49 CFR 571.210, S3 (definition of “Type 2 seat belt assembly”).

⁴ See FMVSS No. 210, Fig. 2A (pelvic body block), Fig. 2B (optional pelvic body block for center seating positions), and Fig. 3 (torso body block). See also FMVSS No. 222, “School bus

passenger seating and crash protection,” Figure 2 (pelvic body block). The FMVSS No. 222 pelvic body block is only used for school buses with a GVWR of 4,536 kilograms (kg) (10,000 pounds) or less.

The body blocks are placed on the seat, secured with the seat belt,⁵ and attached (typically, with heavy-duty chains) to a force actuator that applies the specified test forces. Although not currently specified in the regulatory text of FMVSS No. 210, the laboratory test procedure for the standard specifies a preload in addition to the test force.⁶ Specifically, after the body blocks are secured with the seat belt, the force actuator applies a preload equal to 10% of the test force. While at the preload level, photographs and measurements of the load application angles are taken. The load is then increased to the full test force. The test force must be attained within 30 seconds and held for 10 seconds. The anchorage, attachment hardware, and attachment bolts must withstand this loading;⁷ permanent deformation or rupture of a seat belt anchorage or its surrounding area is not considered to be a failure if the required force is sustained for the specified time.⁸ Typically, for compliance testing, all seats in the vehicle are tested, starting from the front of the vehicle. After the front seats have been tested, they may be removed to facilitate access to the rear seats.

Neither the standard nor the laboratory test procedure specifies precisely where on the vehicle seat NHTSA will position the body blocks. This lack of specificity has, in the past, resulted in manufacturers conducting compliance testing differently from NHTSA, as illustrated in an enforcement action brought against Chrysler in the 1990s for apparent noncompliance with FMVSS No. 210.⁹ In the compliance test at issue there, NHTSA positioned the pelvic body block away from the seat back. Chrysler argued that its vehicle met the anchorage strength requirements when tested with the body block placed against the seat back, and that NHTSA's placement of the pelvic body block

forward of the seat back was not required by FMVSS No. 210. Ultimately, the U.S. Court of Appeals for the District of Columbia Circuit determined that NHTSA had failed to provide adequate notice about the correct placement of the pelvic body block and ruled that NHTSA could not compel Chrysler to recall the vehicles.

In addition, setting up the body blocks for testing can be cumbersome because the torso body block does not sit on the seat and must be supported by someone or something as the preload is applied to the shoulder portion of the seat belt. Doing so can be challenging when testing multiple adjacent seating positions simultaneously because the preload must be maintained on body blocks that are already set up until all the body blocks are set up in a manner that minimizes the chance of load interference, and all seating positions are ready for the full test force. This setup typically necessitates two technicians and, potentially, multiple attempts to run the test, because the torso body block tends to come out of position.

B. 2012 Notice of Proposed Rulemaking

To address the issues identified by the *Chrysler* decision and the challenges associated with the use of the body blocks, on March 30, 2012, the agency published an NPRM.¹⁰ In that NPRM, NHTSA proposed to amend FMVSS No. 210 to replace the pelvic and torso body blocks with a new Force Application Device (FAD).

The FAD consists of an upper torso portion and a pelvic portion hinged together to form a one-piece device that roughly resembles the human form. NHTSA developed two different size versions of the FAD, referred to as FAD1 and FAD2. The external dimensions of the FAD1 are based on digital data developed by the University of Michigan Transportation Research Institute (UMTRI) as a representation of the 50th percentile adult male.¹¹ The FAD1, which weighs 55.8 kg (123 lb), replicates the torso and lap portions of what UMTRI calls the "Golden Shell" and reproduces the seat belt angles produced when a seat belt is fastened around a 50th percentile adult male. NHTSA developed the specifications for the smaller FAD2 to use at designated seating positions (DSPs) that are too narrow in width to accommodate the FAD1, such as some rear center seats in passenger cars and MPVs. The FAD1

and the FAD2 are specified in approximately 32 drawings that were docketed with the NPRM. As requested by Faurecia S.A. Automotive Seating, NHTSA provided the Initial Graphics Exchange Specification files of the 3-D contours for the torso and pelvis portions of the FAD1 and FAD2, and in a docketed memo informed the public that the files were available upon request.¹² NHTSA estimated the cost of each FAD to be approximately \$8,000.

The proposed regulatory text specified how the FADs would be seated at the outset of the strength test (*i.e.*, before any load was applied to the belt). Like the existing body blocks, the FADs are secured with the seat belt(s) and are attached to a force actuator that applies the specified test forces. For combination lap/shoulder belts (Type 2 seat belts), the force actuator is connected to separate connection points on the torso and lap portions of the FAD to apply the required forces to the lap and shoulder portions of the belt simultaneously; for lap belt-only anchorages, a bridged pull yoke is used to connect the connection points of the torso and lap portions of the FAD, so that they are jointly pulled.

As to which FAD the agency would use for a particular designated seating position, NHTSA proposed that if it was not testing in accordance with S4.2.4,¹³ it would use the FAD1. For tests conducted in accordance with S4.2.4, NHTSA proposed that, if after the FAD1 devices are installed, but prior to conducting the test, there is contact between the FAD1s (or if there is contact between the FAD1s that prevent them from fitting side-by-side), an inboard FAD1 would be replaced with a FAD2. (As discussed later in this document (in section V.C.2.b), the proposal was not clear whether this contact was prior to the preload force or prior to when the test force was applied to the FADs.) If there is still contact between the FADs, and if there is another inboard DSP, an additional inboard FAD1 would be replaced with a FAD2, and so on. If the contact continues with all inboard DSPs with FAD2s, the FAD1 in the right outboard

⁵ The seat belt may be replaced with material whose breaking strength is greater than or equal to the breaking strength of the webbing for the seat belt assembly installed as original equipment at that seating position. S5.

⁶ Laboratory Test Procedure for FMVSS 210 Seat Belt Assembly Anchorages. U.S. Department of Transportation, National Highway Traffic Safety Administration (TP-210-09) (Feb. 7, 1994), available at <https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-06/tp-210-09-tag.pdf>. The Office of Vehicle Safety Compliance (OVSC) publishes, for each standard, a laboratory test procedures manual containing more detailed test procedures and laboratory practices for NHTSA-contracted test laboratories. This is distinguished from the test procedures set out in the regulatory text of the FMVSS.

⁷ S4.2.1, S4.2.2.

⁸ S4.2.3.

⁹ See *United States v. Chrysler Corp.*, 158 F.3d 1350 (D.C. Cir. 1998).

¹⁰ 77 FR 19155 (March 30, 2012).

¹¹ Robbins, D. 1985. "Anthropometric Specifications for Mid-Size Male Dummy," Volume 2, UMTRI, DOT HS 806 716.

¹² NHTSA-2012-0036-0020. These reference materials would not be incorporated into FMVSS No. 210. Instead, they are intended only for reference purposes (*e.g.*, to facilitate fabrication and inspection of parts).

¹³ Briefly stated, S4.2.4 specifies that anchorages, attachment hardware, and attachment bolts shall be tested by simultaneously loading them if: (a) the DSPs are common to the same occupant seat and face the same direction, or (b) the DSPs are not common to the same occupant seat, but a DSP has an anchorage that is within 305 mm of an anchorage for one of the adjacent DSPs, provided that the adjacent seats face in the same direction.

DSP would be replaced with a FAD2. If there is still contact between the FADs, the FAD1 in the left outboard DSP would be replaced with a FAD2.

The agency received 14 comments in response to the NPRM from 13 organizations and an individual. (One entity submitted two comments.) Commenters included five vehicle manufacturer associations, three medium and/or heavy-duty truck manufacturers, two light vehicle manufacturers, two seat suppliers, one bus manufacturer, and one test facility. The commenters stated several concerns with the FAD and the corresponding seating procedure. These concerns included issues such as the design and performance of the FAD, harmonization, the proposed test procedure, and cost. (The comments are discussed in detail later in this document.)

C. 2015 Supplemental Notice of Proposed Rulemaking

After considering the comments on the NPRM, the agency decided to evaluate the feasibility of maintaining the current body blocks and refining the regulatory test procedure to specify where on the seat NHTSA would position the body blocks. On March 2, 2015, NHTSA published an SNPRM.¹⁴

The agency explained that it was considering specifying, either instead of or as an alternative to the FAD, zones within which the current body blocks would be placed. The procedure would establish a three-dimensional region with respect to the seat in which the body blocks would be positioned; there would be two zones, one for the torso body block, and one for the pelvic body block. The pelvic body block would be positioned within the pelvic body block zone and the torso body block would be positioned within the torso body block zone. This positioning would be accomplished by first applying a preload force (of 1,335 N) to each body block. While this preload force is being applied, the torso and pelvic body blocks would be positioned so that a specified “target” on each block is within each of the applicable zones.

As explained in the SNPRM, this positioning is based on the similar procedure specified in FMVSS No. 222, School bus passenger seating and crash protection.¹⁵ FMVSS No. 222 includes a “quasi-static” test requirement to help ensure that school bus seat backs incorporating lap/shoulder belts are strong enough to withstand both the forward pull of the torso belts and the

forces imposed on the seat from unbelted passengers to the rear of the belted occupants in a crash. That procedure, which uses the FMVSS No. 210 torso body block (but not the pelvic body block), establishes a zone in which the torso body block must be located. Specifically, FMVSS No. 222 specifies that the torso body block is placed in the seat, secured behind the seat belt, and a preload of 600 N is applied. This preload force is, depending on the weight of the vehicle being tested (because the test forces specified in FMVSS No. 222 depend on vehicle weight), approximately 8 percent to 18 percent of the full test load. After the preload application is complete, the origin of the torso body block radius at any point across the torso body block thickness must lie within a zone defined by specified boundaries. The forward boundary of this zone is established by a transverse vertical plane of the vehicle located 100 mm longitudinally forward of the seating reference point (SgRP).¹⁶ The upper and lower boundaries of the zone are 75 mm above and below the horizontal plane located midway between the horizontal plane passing through the school bus torso belt adjusted height (specified in S3 of FMVSS No. 210), and the horizontal plane 100 mm below the SgRP. After the 600 N preload is applied and the torso body block is verified as being within the specified zone, the required test forces are applied.¹⁷

NHTSA explained in the SNPRM that it was planning to develop separate zones for the placement of the torso and pelvic body blocks to be specified in FMVSS No. 210. By refining the current test procedure to include these zones, NHTSA stated that it intended the standard to be clearer as to how the agency will position the body blocks. The agency explained that it did not intend to increase the stringency of the standard. The agency also stated that it had initiated research to develop the zones and stated that the research would evaluate the zone concept across different vehicle types and seat configurations and establish appropriate zone boundaries to ensure that the procedure is feasible and practicable for all vehicles.

NHTSA received nine comments in response to the SNPRM: three vehicle manufacturer associations, one vehicle manufacturer, three suppliers, one foreign government, and one individual.

¹⁶ The seating reference point (SgRP) is defined in 49 CFR 571.3.

¹⁷ The required test forces for FMVSS No. 222 vary from 3,300 N to 7,500 N, depending on the weight of the bus and the type of seat.

The commenters raised several concerns and issues with the SNPRM. These concerns included, among other things, concerns with the appropriateness of the zone concept, the size of the zones and potential variability in the test results, and specific concerns with the test procedures. There were also several additional comments about the FADs. Several SNPRM commenters supported the continued use of the body blocks in addition to the option of using the FAD. Many of the compliance concerns raised in response to the NPRM were also present in response to the SNPRM, since the agency proposed refining the test procedure for the continued use of the body blocks. For instance, commenters raised concerns regarding recertification, lead time, harmonization, and costs associated with recertification and potential redesign. These comments are discussed in detail later in this document.

D. 2018 Notice of Availability

In 2018, NHTSA published a notice of availability¹⁸ and docketed reports and data on the additional research it had completed on the FAD and the development of the body block zones. NHTSA also docketed test reports describing additional testing conducted with the FAD. This research is discussed in more detail in section IV, NHTSA Research and Testing, and elsewhere in the preamble where relevant. NHTSA received two comments from trade groups in response to the 2018 notice of availability (a list of the comments received in response to the NPRM, SNPRM, and notice of availability is provided in appendix A of this document). The comments recommended, among other things, that NHTSA issue and provide opportunity to comment on a pre-final rule draft test procedure and schedule a compliance workshop. These comments are discussed in detail later in this document.

E. International and Industry Consensus Anchorage Strength Requirements and Test Procedures

International regulations and industry consensus standards also establish seat belt anchorage strength requirements. These include United Nations Regulation No. 14 (ECE R14), Transport Canada’s Technical Standards Document No. 210, Australian ADR 05, and SAE Standard J384 (2014). As explained below, all these standards specify pelvic and torso body blocks similar to the FMVSS No. 210 body

¹⁸ 83 FR 16280 (April 16, 2018).

¹⁴ 80 FR 11148 (March 2, 2015).

¹⁵ See 73 FR 62744 (October 21, 2008) (final rule upgrading FMVSS No. 222).

blocks but do differ somewhat from the FMVSS No. 210 test procedures.¹⁹

United Nations Regulation No. 14 (ECE R14) and Australian ADR 5, Anchorages for Seatbelts

ECE R14 provides the uniform provisions concerning the approval of vehicles regarding seat belt anchorages, including the general test requirements for seat belt anchorages. The load requirements differ somewhat from FMVSS No. 210 (e.g., FMVSS No. 210 requires 13,345 N and ECE R14 requires 13,500 N $\pm$ 200 N) and there are different load requirements for different vehicle types. For example, category M1 and N1 vehicles (passenger cars, multipurpose passenger vehicles, vans, pick-ups, and light trucks) have similar requirements as FMVSS No. 210 but M3, N3, and other vehicle types have lower load requirements. R14 also specifies different load requirements for rear-facing and side-facing designated seating positions (same as the requirements for M3 vehicles). As far as achieving the required load and the holding requirement, ECE R14 allows achieving the load in 60 seconds (versus FMVSS No. 210 requirement of 30 seconds) and the hold requirement is 0.2 seconds (versus FMVSS No. 210 requirement of 10 seconds). Australian ADR 5, Anchorages for Seatbelts, follows the ECE R14 requirements.

ECE R14 and FMVSS No. 210 specify similar body blocks for testing the seat belt anchorages.²⁰ R14 also specifies some aspects of the test procedure not currently specified in FMVSS No. 210. R14 specifies the placement of the body blocks at preload; it specifies that the belt be pulled tight against the pelvic block and that the torso block be pushed back into the seat back while the belt is pulled tight around it. R14 also specifies the location of the pivot point on the torso body block. R14 specifies a preload of 10 percent of the full load, with a tolerance of $\pm$ 30 percent. Another distinction between FMVSS No. 210 and ECE R14 is that ECE R14 also has a distinct pelvic block for testing side-facing seats and specifies that the direction of the test load be forward in relation to the vehicle.

Transport Canada's Technical Standards Document No. 210

Transport Canada's Technical Standards Document No. 210, Seat Belt Anchorages, is based on FMVSS No. 210,²¹ and the two standards are nearly identical. The same pelvic and torso body blocks are used to test the strength of the seat belt anchorages at the same test loads for Type 1 and Type 2 seat belts and with the same hold time of 10 seconds once the test load is achieved. Like FMVSS No. 210, the Canadian standard lacks a specification for the placement of the body blocks at preload. The standard specifies a procedure for adjustments in the event of interference between the pelvic body block and belt buckle. A 50th percentile anthropomorphic test dummy (ATD) is placed at each seating position with the seat belt fastened around it and all slack is removed from the webbing. At this position, the belt webbing is marked and the ATDs are removed. The body blocks are placed "against the back of the seat" and the belts are fastened around the blocks. The blocks are moved forward if the belt buckle seems to be susceptible to damage upon inspection, but the blocks are not to be moved further forward than the mark made with the ATD placed in the seat. The approach of using an ATD to address interference between the block and the belt buckle differs from NHTSA's test procedure for FMVSS No. 210.

SAE J384 (Rev. 2014) and J383 (Rev. 2014)

SAE J384 (Rev. 2014) specifies test procedures for seat belt anchorages and SAE J383 (Rev. 2014) provides design recommendations for seat belt anchorage locations. SAE J384 is nearly identical to FMVSS No. 210, with similar body block specifications (the torso body block has the same dimensions, but also includes a pull arm), test loads, and the option to replace the seat belt webbing with other material. The standard specifies a preload of 10%. The body blocks are positioned at each DSP and the seat belts are positioned around the blocks "to represent design intent routing."

III. NHTSA's Statutory Authority

NHTSA is adopting this rule pursuant to its authority under the National

Traffic and Motor Vehicle Safety Act, 49 U.S.C. 30101 *et seq.* ("Safety Act"). Under the Safety Act, NHTSA (under authority delegated by the Secretary of Transportation²²) is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.²³ "Motor vehicle safety" is defined in the Motor Vehicle Safety Act as "the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle."²⁴ "Motor vehicle safety standard" means a minimum performance standard for motor vehicles or motor vehicle equipment.²⁵ When prescribing such standards, NHTSA must consider all relevant, available motor vehicle safety information.²⁶ NHTSA must also consider whether a proposed standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.²⁷ In promulgating this rule, NHTSA carefully considered all the aforementioned statutory requirements. NHTSA evaluates this rule with respect to these requirements in section V of the preamble where relevant.

IV. NHTSA Research and Testing

This final rule is supported by a variety of research. Some of this research was docketed with the NPRM. Research was also conducted and docketed after the NPRM but before issuance of this final rule. NHTSA briefly summarizes the agency's research below. More specific discussion of various aspects of this research is available in the cited test reports, the NPRM, and in subsequent sections of this document. This research is summarized in Table 1.

¹⁹ The NPRM made mention of an ISO standard (TR 1417–1974) but that has since been withdrawn.

²⁰ For example, the regular size pelvic block and the torso block dimensions have slight variations (e.g., for torso block R200 vs R203; for pelvic block the width is 406 mm vs 356 mm and R520 vs R495, etc.).

²¹ https://tc.canada.ca/sites/default/files/migrated/tsd_210_en.PDF (last accessed June 14, 2024).

²² 49 CFR 1.95.

²³ 49 U.S.C. 30111(a).

²⁴ 49 U.S.C. 30102(a)(9).

²⁵ Section 30102(a)(10).

²⁶ Section 30111(b)(1).

²⁷ Section 30111(b)(3)–(4).

TABLE 1—SUMMARY OF RESEARCH SUPPORTING FINAL RULE

Research	Summary	Docket ID
Research Docketed with NPRM		
Final Report: Development of a Combination Upper Torso and Pelvic Body Block for FMVSS 210 Test.	Description of design, materials, and positioning procedures. Analysis of FAD positioning consistency based on testing of nine light vehicles from two-seat sports cars to light-duty trucks. Analysis of FAD anchorage force repeatability based on testing of three seat configurations.	NHTSA–2012–0036–0002.
Indicant Test Reports	Full-scale FMVSS No. 210 anchorage strength tests using the FAD on nine vehicles: six passenger cars, an 11-passenger van, a minivan with stow-and-go seating, and an F–150 SuperCab pickup truck.	NHTSA–2012–0036–0002.
Repeatability Analysis of the Forces Applied to Seat Belt Anchors Using the Force Application Device.	Additional analysis of FAD anchorage force repeatability using the FMVSS No. 214 test procedure and comparing channel measurements differences.	NHTSA–2012–0036–0002.
FAD inspection report	Report of drawings and parts lists, drawing revisions, and measurements of multiple FAD devices used in . . .	NHTSA–2012–0036–0002.
FAD drawing packages	Drawing packages for the FAD1 and FAD2	NHTSA–2012–0036–0002.
Research Docketed with Notice of Availability		
Body Block Zone Development Report.	Report detailing development of body block zones	NHTSA–2012–0036–0041.
Indicant testing of FAD on buses with gross vehicle weight rating (GVWR) >10,000 lb.	Full-scale FMVSS No. 210 tests with the FAD in the driver's seat on two school buses and a motorcoach.	NHTSA–2012–0036–0042 (school bus), NHTSA–2012–0036–0043 (school bus), NHTSA–2012–0036–0044 (Motorcoach).
Indicant testing on passenger vehicles.	Full-scale FMVSS No. 210 tests on passenger vehicles to test body block zone concept and equivalence with the FAD.	
Honda Fit (sedan)	Simultaneous testing with body blocks and FAD	NHTSA–2012–0036–0036.
Mitsubishi i-Miev (subcompact)	Simultaneous testing with body blocks and FA	NHTSA–2012–0036–0046.
Chevy Suburban (MPV/sports utility vehicle (SUV)).	Simultaneous testing with body blocks and FAD	NHTSA–2012–0036–0040.
Ford Fusion (sedan)	Matched pair testing with body blocks and FAD	NHTSA–2012–0036–0034, NHTSA–2012–0036–0035.
Ford Fusion (sedan)		
Ford C-Max (sedan)	Matched pair testing with body blocks and FAD	NHTSA–2012–0036–0033, NHTSA–2012–0036–0045.
Ford C-Max (sedan)		
Subaru Impreza (compact)	Matched pair testing with body blocks and FAD	NHTSA–2012–0036–0037, NHTSA–2012–0036–0039.
Subaru Impreza (compact)		

A. Research Docketed With the NPRM

The research docketed with the NPRM consisted of materials and reports relating to the development and evaluation of the FAD, including extensive full-scale FMVSS No. 210 tests to determine whether the FAD performs equivalently to the existing body blocks.

NHTSA contracted with the engineering consulting firm KARCO Engineering (Karco) to design, manufacture, and test a new FMVSS No. 210 test device.²⁸ Karco also developed the procedure for positioning the FAD in the vehicle seat and assessed the repeatability of the positioning procedure. As explained in the NPRM, three different laboratory technicians were able to place a FAD in a specific test vehicle so that the predetermined measuring points were within ¼ inches

(6.35 mm) of the same point of the same FAD in the same test vehicle placed by the other technicians. FMVSS No. 208, S10.4.2.1, specifies a ½ in. (12.7 mm) tolerance for the H-point, so a ¼ in. (6.35 mm) variability for seating the FAD can be considered reasonable.

NHTSA also assessed the repeatability of the forces applied to the seat belt anchorages in the FMVSS No. 210 anchorage strength test using the FAD.²⁹ Anchorage load cells were mounted to a rigid test rig, the vehicle seat was replaced with a rigid seat, and the seat belt webbing was replaced with high strength webbing. The test configuration

was set up in a generic configuration to minimize variability. A FAD1 was positioned, belted, and pulled per the proposed FMVSS No. 210 test procedure. This test was repeated four times, and a statistical analysis was performed on both the peak force values as well as time-based metrics. The coefficient of variance (CV) was used to assess the variability of the peak values for each data channel to assess the repeatability of the test results and to rate the channels based on established CV acceptance criteria. The data and analysis presented in the repeatability analysis demonstrate that the forces applied to the seat belt anchor points by the FAD using the FMVSS No. 210 procedure are repeatable.

NHTSA then conducted full-scale FMVSS No. 210 anchorage strength tests (“indicant tests”³⁰) on nine vehicles: six passenger cars, an 11-passenger van, a

²⁸ NHTSA–2012–0036–0002 (“Final Report: Development of a Combination Upper Torso and Pelvic Body Block for FMVSS 210 Test, Revision A,” May 22, 2003, KARCO Engineering, LLC).

²⁹ NHTSA–2012–0036–0002 (“Repeatability Analysis of the Force Applied to Safety Belt Anchors Using the Force Application Device (May 2009)”). KARCO also assessed the repeatability of the forces recorded at the seat belt anchorages and compared these to the forces recorded with the current body blocks. *See supra* note 15, KARCO Final Report. However, this force repeatability study did not adhere strictly to the proposed test procedure, so NHTSA conducted a new analysis (discussed in the next paragraph) that did strictly adhere to the proposed test procedure. *See* NPRM at 19157.

³⁰ We use the term “indicant” test, as opposed to “compliance” test, because NHTSA was not testing these vehicles to determine whether they comply with the standard.

minivan with stow-and-go seating, and an F-150 SuperCab pickup truck.³¹ The purpose of the tests was to determine whether the FAD performed equivalently to the existing body blocks, and to evaluate the overall performance and usability of the FADs. Every seat in each vehicle was tested; seats in the same row were tested simultaneously. The FAD1, FAD2, and the body blocks (pelvic and torso) were positioned in adjacent seating positions, with the FAD1 in the left seat, the current upper torso and pelvic body blocks in the right seat, and the FAD2 in the center seat (if present). The FADs were positioned using the proposed seating procedure.³² There were no test failures. The testing also showed some advantages of the FAD compared to the current body blocks: the FADs were easier to position, and the hydraulic test load application cylinders were less likely to bottom out when testing seating positions with load limiters.

B. Research Docketed in 2018

After the SNPRM was published in 2015, the agency conducted research to develop the body block zones and to further evaluate the FAD. There were three phases of this research and NHTSA docketed the research in 2018.

The first phase of research involved indicant anchorage strength tests on nine vehicles (described below) with the FAD and/or the body blocks.³³ This testing had two purposes. One was to validate a preliminary zone concept for the initial positioning (at preload) of the existing pelvic and torso body blocks. The other purpose was to respond to concerns voiced by commenters to the NPRM. The nine indicant tests previously performed to develop the NPRM involved testing the FAD and body blocks simultaneously in the same vehicle. Commenters to the NPRM stated that this testing might not accurately represent the performance of the seat belt assembly anchorages in an actual compliance test, which would use (if the FAD were adopted as proposed) only the FAD. To address this concern, in this phase of research

NHTSA performed some of the indicant tests with only the FAD or only the body blocks.

For all vehicles, only the rear seating positions were tested, because the vehicles NHTSA had that were readily available for testing only had rear seating positions that were viable for testing. The FADs were positioned using the seating procedure proposed in the NPRM. The body blocks were positioned using a preliminary zone concept based on the positioning procedure for the torso body block used in the quasi-static test for lap/shoulder seat belts on school buses in FMVSS No. 222.³⁴ The body blocks were subjected to a preload of 1,335 N. This mirrors the current FMVSS No. 210 laboratory test procedure for the body blocks, which specifies a preload of 10% of the target load (1,335 N is ten percent of the full test load specified in FMVSS No. 210 for the lap and shoulder portions of a Type 2 seat belt assembly).³⁵ The position of the torso body block was then adjusted, if necessary, so that the origin of the body block radius at any point across the body block thickness was within the zone. To investigate the commenters' concerns about testing the FAD and body blocks simultaneously in the same vehicle, we tested three matched pairs of vehicles (Fusion, C-Max, and Impreza). One vehicle in each pair was tested with only the body blocks, and the other vehicle in the pair was tested with only the FAD. In the other three vehicles, NHTSA tested the body blocks and FAD simultaneously in the rear outboard seats (with the FAD in one seat and the body blocks in the other seat). There were no failures in any of these tests. This testing showed that the zones were viable and that they would not have to be unreasonably large.

The second phase of research involved development, testing, and validation to establish practicable and repeatable zones for the preload positioning of the pelvic and torso body

blocks.³⁶ The first phase of testing referred to immediately above served as a proof of concept for the zones. In this second phase of research, the agency developed zones that would be valid for a wide range of vehicles and vehicle types. The agency first determined the factors affecting the position of the body blocks at preload, using a generic test fixture, and used this information to refine the procedure for positioning the body blocks at preload. This refined procedure was used to apply a preload force to the body blocks in five different passenger vehicles (ranging in size from a subcompact to SUVs) with a variety of seat and belt configurations as well as the generic test fixture. Several different parameters (*e.g.*, with and without a wooden positioning fixture for the torso block, preload force³⁷) were systematically varied to reflect the full range of conditions that might affect the position of the blocks at preload. The tests were conducted in the left outboard and center seats (all tested DSPs had Type 2 belts). This resulted in a total of 125 tests. The agency recorded the position of the torso and pelvic body blocks at preload for each test.

This data set was then mathematically expanded in two ways. First, because the outboard seat tests were conducted only in the left seating position, and because center seating positions can have the shoulder belt on either the left or right side, this data did not represent the full range of target positions for all seating locations. Therefore, additional data points were calculated for right outboard seating positions and center seating positions with the shoulder belt over the occupant's right shoulder by "mirroring" the Y-coordinate values. These "mirrored" locations represent the right outboard seating positions and center seating positions with the shoulder belt over the occupant's right shoulder. Second, the zones (including the mirrored data points) were expanded to four standard deviations in the X, Y, and Z directions. This expansion of the zones was intended to allow for vehicle configurations not evaluated in the study and future vehicle designs. The result (with the

³¹ NHTSA-2012-0036-0002 (test reports for each indicant test).

³² With respect to the body blocks, neither the standard nor the laboratory test procedure currently specifies precisely where on the vehicle seat the body blocks should be positioned, so the laboratory technicians had no procedure to follow for this.

³³ NHTSA-2012-0036-0035 (Ford Fusion), NHTSA-2012-0036-0034 (Ford Fusion), NHTSA-2012-0036-0037 (Subaru Impreza), NHTSA-2012-0036-0039 (Subaru Impreza), NHTSA-2012-0036-0033 (Ford C-Max), NHTSA-2012-0036-0040 (Chevrolet Suburban), NHTSA-2012-0036-0036 (Ford Fusion), NHTSA-2012-0036-0045 (Ford C-Max), NHTSA-2012-0036-0046 (Mitsubishi I-Miev).

³⁴ See SNPRM at pg. 11151. The procedure generally followed the FMVSS No. 222 procedure except that the D-ring is used as the reference point instead of the TBAH. For more information, see the docketed test reports. As noted earlier, neither the standard nor the laboratory test procedure currently specifies precisely where on the vehicle seat the body blocks should be positioned. For this testing, the pelvic body block was typically positioned (prior to application of the preload force) such that the centerline of the block and the centerline of the seat were aligned with the back of the block in contact with the seat back.

³⁵ Laboratory Test Procedure for FMVSS 210 Seat Belt Assembly Anchorages. U.S. Department of Transportation, National Highway Traffic Safety Administration (TP-210-09) (Feb. 7, 1994), pg. 21.

³⁶ The research summarized here is explained in more detail in the docketed report "Development of Positioning Zones for FMVSS No. 210 Body Blocks" (NHTSA-2012-0036-0041).

³⁷ One of the test parameters the study systematically varied was the preload force. The study measured the body block target locations with preload forces of 1,335 N and 2,224 N. The laboratory test procedure has long specified that the preload be ten percent of the target (test) load. The former preload is ten percent of the test load for the lap and shoulder portions of a Type 2 seat belt assembly, and the latter preload is ten percent of the test load for Type 1 seat belt assemblies.

coordinates of the vertices rounded up to the nearest 5 mm for ease of use) is the zones specified in this final rule. The precise locations of the zones are

specified in relation to the SgRP. The dimensions of the zones are summarized in Table 2 (Table 1 of the regulatory text) and Figure 6 in the

regulatory text provides a depiction of the body block zones.

TABLE 2—BODY BLOCK ZONE DIMENSIONS

Zone	Depth (mm)	Width (mm)	Height (mm)
Pelvic Body Block	205	340	145
Torso Body Block	240	530	245

Two additional steps were taken to further validate the zones. First, an indicant test was carried out on two DSPs in the second row of a Ford Freestar minivan with the body blocks at the longitudinal extremes of the positions recorded in the fleet study.³⁸ This test was used to examine if the location of the body block at these extremes had an effect on the seat belt anchorages meeting the load requirements of FMVSS No. 210. The blocks were positioned in the zones and the test was successfully run, with no failures. Second, the zones were validated in heavy-duty vehicles.³⁹ The fleet study used to develop the zones involved only light-duty vehicles, the largest of which was a Ford Freestar. The agency verified the zones in two school bus seats and one motorcoach seat. The tested seats are commonly used on large (GVWRs greater than 10,000 pounds) buses and motorcoaches. Each seat had three DSPs. NHTSA applied the preload force and verified that the body blocks could be positioned in the zones at each of these DSPs.

The third phase of research involved indicant tests with the FAD on buses with a GVWR of more than 4,536 kilograms (10,000 pounds). The indicant tests using the FAD docketed with and discussed in the NPRM were on passenger vehicles with GVWRs of less than 10,000 lb. Commenters to the NPRM noted that, at the time the NPRM was published, NHTSA had not tested any heavy-duty vehicles using the FAD and expressed concerns about whether the FAD would perform equivalently to the body blocks in heavy-duty applications (see section V.A.4 below). The objective of the additional indicant testing with the FAD on these buses was to determine whether the FAD affects the stringency of the anchorage strength test on heavy duty vehicle seats and to assess how the FAD performs in these tests. The agency performed three

indicant tests with the FAD in the driver’s seat of three different buses: A school bus with a pedestal-type seat;⁴⁰ a school bus with an air suspension seat;⁴¹ and a motorcoach with an air suspension seat.⁴² The tests were conducted with the driver’s seats installed in the buses, using the proposed FAD positioning procedures. All the seat belt anchorages tested met the FMVSS No. 210 performance requirements.

V. Final Rule and Response to Comments

A. Force Application Device⁴³

1. FAD Design

i. Durability and Strength of FADs

The NPRM anticipated that the FAD would have a long service life because it consists of components (a polyurethane shell, aluminum structural components, and aluminum and steel peripheral attachments) that should not experience appreciable wear.

Comments

Daimler Trucks North America LLC (DTNA), the Truck and Engine Manufacturers Association (EMA), and the Alliance of Automobile Manufacturers (Alliance)⁴⁴ brought up concerns about the how durable the FAD would be if tested to failure. FMVSS No. 210 does not require testing the seat belt assembly anchorages to failure nor does the agency conduct tests to failure. However, these commenters noted that after ensuring compliance with the FMVSS No. 210 requirements manufacturers normally continue to load the anchorages to failure. EMA stated that testing to

failure provides crucial data regarding the compliance margin and ultimate strength of the seat belt assembly anchorages. EMA’s concern is that it is unknown whether the FADs are strong enough to withstand this testing and that if test engineers must, after proving compliance, replace the FAD with body blocks to test to failure, it would increase the cost and accuracy of testing. DTNA similarly stated that due to the lack of experience with the construction and durability of the FAD it is unknown whether it will withstand the destructive testing that manufacturers perform to evaluate the ultimate strength of the seat belt anchorages. The Alliance also stated it was concerned with the long-term durability of the polyurethane shell, especially given the lack of any data or analysis regarding the durability of this test device at the elevated loading conditions typical of original equipment manufacturer (OEM) compliance testing.

Agency Response

The agency does not perform or require tests to failure for the seat belt assembly anchorages. While we understand manufacturer concerns, the agency is not willing to research the FAD’s material strength for testing that goes beyond our performance requirements. While we have not found any evidence of wear on the FADs used for our research, we cannot predict if testing to failure with the FADs will result in a shorter service life than we predicted for our compliance test requirements, particularly since the failure level would vary for every anchorage design.

If the vehicle manufacturer is concerned about the durability of the FAD when testing anchorages to failure, the manufacturer has the option to certify compliance using the current body blocks.

ii. FAD Material and Potential Seat Belt Slippage

The FADs consist of an upper torso portion and a pelvic portion hinged together to form a single device. The

³⁸ “Development of Positioning Zones for FMVSS No. 210 Body Blocks,” pp. 39–46.
³⁹ *Id.* at pgs. 47–51.

⁴⁰ NHTSA–2012–0036–0043 (FAD Testing on IC School Bus).
⁴¹ NHTSA–2012–0036–0042 (FAD Testing on Blue Bird School Bus).
⁴² NHTSA–2012–0036–0044 (FAD Testing on MCI Motorcoach).
⁴³ The comments summarized in this section were to the NPRM unless otherwise noted.
⁴⁴ After NHTSA received comments from the Association of Global Automakers and the Alliance of Automobile Manufacturers, they merged to form the Alliance for Automotive Innovation.

torso and pelvic portion are manufactured from a smooth polyurethane material. The lap belt would be positioned over the pelvic portion of the FAD, and if applicable, the shoulder belt would be positioned across the FAD's torso portion.

Comments

EMA, DTNA, the Alliance, Navistar, Inc. (Navistar), and the People's Republic of China were concerned about the potential for the FAD to allow the seat belt (or the material that is used to replace the seat belt) to slip during testing, resulting in an invalid test. EMA commented that while the current body blocks are covered with foam that secures the seat belt in place, the FADs are made of smooth polyurethane that may allow the belt to slip. The Alliance similarly stated that the FADs do not guide the webbing like the current body blocks. DTNA commented that the belt might slip in heavy truck testing due to the unique seating and seat belt systems (e.g., air suspension seats have a more upright seating configuration and tethers to anchor the seat belts to the cab structure). Navistar was also concerned about the validity of the test if the torso belt slipped off the FAD.

Agency Response

The agency did not encounter any problems with the seat belts slipping off the FADs in any of the testing conducted, including indicant tests on fifteen light vehicles and three heavy vehicle driver seats. In fact, NHTSA did not observe any significant movement of the seat belt on the FAD during any tests, so we do not see this slippage as a potential source for seat belt webbing damage. If the seat belt slid off or over the FAD during a compliance test it would be considered an invalid test, not a non-compliance. The commenters provided no data to support their concerns for seat belt slippage when the FAD is used. Therefore, the agency does not anticipate that this slippage will be a problem in future compliance tests or testing manufacturers may conduct for self-certification.

iii. Weight of the FADs

The NPRM stated that the FAD1 weighs 55.79 kg (123 lb) and the FAD2 weighs 27.55 kg (47.5 lb). For comparison, the weight of the current body blocks varies depending on the material with which they are fabricated and the design of the torso body block. As noted earlier, the standard does not specify the type of material. NHTSA's understanding, based on its test experience, is that the torso body blocks can weigh approximately 7.7 kg (17 lb)

to 13.6 kg (30 lb) depending on the design type (see discussion in section V.B.7.a) and material (aluminum and/or steel). The standard pelvic body block weighs approximately 37.9 kg (83.5 lb), and the optional pelvic body block for inboard seating positions weighs approximately 19.5 kg (43 lb), when made from aluminum.

Comments

Navistar, the Association of Global Automakers (Global), and Freedman Seating Company (FSC) commented that the increased weight of the FADs compared to the current body blocks could make it difficult to use. For example, Navistar commented that the FADs are significantly heavier than the current body blocks, so installing, positioning, and removing the FADs could cause some issues. FSC stated that it requires one person for every 50 lb to lift items, so three people would be required to lift the FAD1 in and out of the vehicle. FSC also stated that it is nearly impossible for a mechanical assistant to help position the FADs in a vehicle and that tight-quartered vehicles with four rear rows would probably be the most difficult platform to position the FADs. FSC also stated it was concerned about possible injuries (back injuries and strains from lifting) to lab technicians from positioning the FADs.

Agency Response

In its testing, NHTSA found that the FAD was easier to use than the body blocks. For example, NHTSA found that the FADs generally require one installation attempt while the current body blocks may require multiple attempts, possibly with a technician holding the block as the preload is applied, because the torso block must maintain its position in the specified zone during preload. While we acknowledge that the FAD1 is heavier than the combined weight of the current body blocks, during NHTSA's testing it rarely took more than one technician to place the FAD1 in and out of the vehicle. NHTSA also did not encounter any problem with placing the FADs in tight-quartered vehicles, such as the third row of the Chevrolet Suburban and Chevy Express small bus. We acknowledge that test laboratories may have specific policies that prohibit one person from lifting a certain amount of weight, and that whether one technician could place the FAD in a seat would depend on the individual's strength, but we suspect that test laboratories encounter the same issue with anthropomorphic test device dummies, which are, in some cases, significantly heavier than the FAD1; for example, the

Hybrid III (HIII) 50th male ATD weighs approximately 170 pounds.

iv. Dimensions of the FADs

The NPRM included a table that summarized the dimensions of the FAD1 and FAD2, and, for comparison, the dimensions of the HIII test dummies representing the 50th percentile adult male, 10-year-old child, and the 5th percentile adult female.⁴⁵ The FAD1's dimensions most closely resembled that of the 50th percentile adult male and the FAD2's dimensions were less than that of the 10-year-old child test dummy.

Comments

In response to the NPRM, Johnson Controls, Inc. (JCI) acknowledged the need to use the FAD2 for designated seating positions too narrow to accommodate the FAD1 but commented that the shoulder height for the FAD2 is exceptionally low, creating unrealistic load vectors that will negatively impact seating designs and configurations. JCI suggested that if the FAD2 is intended to replicate a small child, it should be seated in a child or booster seat to create real-world load vectors, and if it is intended to replicate a small adult that the agency should reference databases such as UMTRI to aid in the development of the test device.

In response to the SNPRM, an individual (Jung HoYoo) commented that the safety of average female drivers and passengers would be better addressed by using another FAD that represents the 50th percentile adult female, because the FAD2 represents the weight/size of approximately half of a 50th percentile male.

Agency Response

NHTSA acknowledges that the placement of the seat belt may not be ideal for some seat belt configurations with the FAD2, but our research has not indicated that the use of the FAD2 is problematic or that it impacts the test results negatively. None of the research tests conducted with the FAD2 resulted in a test failure. For further discussion of the load vectors, see section V.A.4.

The FAD2 was developed to be used at designated seating positions that are too narrow to accommodate the FAD1, when multiple seating positions must be tested simultaneously, such as some inboard seats in the rear rows of passenger cars and MPVs. The FAD2 was not modeled after a particular Hybrid III ATD or occupant category (e.g., 50th percentile adult female) but rather a scaled-down FAD1 to fit narrow

⁴⁵ 77 FR 19155, 19156 (March 30, 2012).

designated seating positions. The NPRM explained that the FAD2's shoulder pivot height, shoulder breadth, and hip breadth is 60%, 71%, and 66% of the 50th percentile male's, respectively. Therefore, the individual commenter's concern that the FAD2 represents an occupant half the size of a 50th percentile male is inaccurate. The weight of the FADs cannot be used to infer representation of a particular Hybrid III ATD or occupant category because the FADs do not have lower legs, arms, or heads. The intent of FMVSS No. 210 is to assess the performance of the seat belt assembly anchorages, not to measure the forces imparted to a vehicle occupant in a crash, so test devices that represent a range of occupant sizes are not necessary.

If the vehicle manufacturer is concerned about the performance of the seat or seat belt assembly anchorages when tested with the FAD2, the manufacturer has the option to certify compliance using the current body blocks.

v. FAD Abdomen Area

The FAD developed by Karco was designed with a pelvic area consisting of a molded protrusion to facilitate placement of the lap belt; the protrusion is the polyurethane part between the aluminum structural pieces that connect the upper and lower portions of the FAD. NHTSA observed in early indicant testing during development of the FAD that the aluminum connecting pieces were causing damage to the belt webbing.

To prevent webbing damage, NHTSA developed hip clips. The hip clips evolved over several design iterations. The initial design version of the hip clips consisted of a metal piece that prevented the aluminum connecting pieces from damaging the seat belt webbing. However, in one of the agency's first indicant tests, the initial version of the hip clips damaged the belt, resulting in the belt breaking.⁴⁶ Accordingly, the agency redesigned the hip clips to have smoother edges to prevent belt breakage. A prototype version of the redesigned hip clips was installed in the FADs for the remainder of the agency's research tests; no belt damage was observed with the redesigned hip clips. The hip clip specifications docketed with the NPRM⁴⁷ differ slightly from the

prototype version of the redesigned hip clips; the hip clips in the proposed drawing are angled to further prevent the seat belt from riding up and they specify stronger and bigger hardware for attachment.

Comments

The Alliance and JCI referenced an indicant test on the 2006 Chevrolet Express Bus in which the initial design version of the hip clips damaged the seat belt webbing. The Alliance commented that it was concerned that even with the redesigned hip clips the FAD's pelvic/torso intersection is not biofidelic and there is a risk of cutting the webbing which is non-representative of field performance. It also questioned whether the pivot point between the torso and pelvis is required. JCI similarly recommended redesigning the hip clip.⁴⁸ The People's Republic of China also commented on the potential for the FAD to damage the seat belt webbing.

Agency Response

The redesigned hip clips are intended to prevent damage to the seat belt by improving the biofidelity of the pelvic/torso intersection to the extent possible. While it is not perfectly biofidelic, the nine research tests with the redesigned hip clips, docketed with the NPRM, and nine research tests conducted by the agency since the NPRM, have not shown damage to the webbing of the seat belt. However, we believe that the design of the prototype hip clip needed improvement, and accordingly modified the design presented in the proposal. We believe the redesigned hip clips function as intended. Regarding whether the existing pivot point between the torso and pelvis portions is necessary, the agency believes a pivot point is necessary to properly position the FAD in the seat. Different seat designs and seat contours will require the ability to pivot the torso and pelvis to properly position the FAD.

vi. Bridged Pull Yoke

The FAD consists of an upper torso portion and a pelvic portion hinged together to form a one-piece device. Where the force actuator attaches to the FAD depends on the seat belt type. For Type 2 seat belts, the force actuator is connected to separate connection points on the torso and pelvis portions of the

FAD. For Type 1 seat belts, a bridged pull yoke is used to connect the connection points of the torso and lap portions of the FAD (so that they are jointly pulled) and the force actuator is connected to this pull yoke. The proposed regulatory text defined the "bridged pull yoke" as the yoke that bridges the torso and pelvis on the FAD1 or FAD2 to apply the required force to a Type 1 seat belt assembly.

Comments

The Alliance suggested the bridged pull yoke be redesigned to prevent it from digging into the seat cushion, which introduces an unintended load path into the system. It cited the indicant test with the 2005 Chrysler Town and Country Minivan as evidence.⁴⁹

Agency Response

The agency conducted four indicant tests (totaling six seating positions) with a FAD1 or FAD2 fitted with the bridged pull yoke on a Type 1 belt. To investigate the Alliance's concern, NHTSA re-examined these indicant tests. One was the indicant test cited by the Alliance with the 2005 Chrysler Town and Country Minivan, in which a third-row center seat with a Type 1 belt was tested with a FAD2 fitted with the bridged pull yoke.⁵⁰ The test photos do not clearly depict the interaction of the FAD2 and the seat cushion. (A video was not recorded for this test.) Therefore, NHTSA is unable to conclude whether the bridged pull yoke dug into the seat. A second test was the indicant test with the 2005 Ford F-150, in which a front inboard seat was tested with a FAD2 with a bridged pull yoke.⁵¹ The pull yoke did not appear to dig into the seat in a way that would interfere with the test because it was near the edge of the seat cushion. To the extent that this circumstance did present an issue during a test, the pull angle or chain could potentially be adjusted to alleviate it. The third indicant test was on a 2000 MCI 102-EL3 Series Motorcoach in which a driver's seat was tested with a FAD1 with a bridged pull yoke.⁵² The pull yoke did not appear to

⁴⁶ FMVSS No. 207 Indicant Test, General Motors Corp., 2006 Chevrolet Express Bus, NHTSA No. C60100, pp 40–72. General Testing Laboratories, Inc. May 2, 2006 (Report No. 207-GTL-05-009).

⁴⁷ NHTSA-2012-0036-0002; Drawings NVS221-210-16B (pg. 1016), NVS221-210-18-B (pg. 1017),

NVS221-210-16J-B (pg. 1042), and NVS221-210-18J-B (pg. 1043).

⁴⁸ JCI referred to the "contour abdomen plate," which we construe as referring to the hip clips because JCI referenced a picture of the webbing damage caused by the hip clips in the 2006 Chevrolet Express Bus indicant test.

⁴⁹ FMVSS No. 207 Indicant Test, Daimler Chrysler Corporation, 2005 Chrysler Town and Country Minivan MPV, NHTSA No. C50310, p. 28. General Testing Laboratories, Inc. May 2, 2006 (Report No. 207-GTL-05-006), Figure 5.20, pg. 28.

⁵⁰ FMVSS No. 207 Indicant Test, Daimler Chrysler Corporation, 2005 Chrysler Town and Country Minivan MPV, NHTSA No. C50310, pg. 28. General Testing Laboratories, Inc. May 2, 2006 (Report No. 207-GTL-05-006).

⁵¹ FMVSS No. 207 Indicant Test, Ford Motor Co. 2005 Ford F-150 Pickup Truck, NHTSA No. C50210, pgs. 18–28.

⁵² Using New Force Application Device on Heavy Duty Vehicle Seats, Research Supporting FMVSS

dig into the seat. The fourth indicant test involved a 2006 Chevrolet Express Bus in which we tested an inboard seat in the third, fourth, and fifth rows with the bridged pull yoke on a FAD2.⁵³ The pull yoke did not appear to dig into the seat.

After considering the Alliance's concern, NHTSA has decided not to redesign the bridged pull yoke. With respect to the FAD2, we acknowledge that while the pelvic portion of the FAD1 usually extends to the front edge of the seat, the pelvis of the FAD2 is not as long as the pelvis of the FAD1. Therefore, the bridged pull yoke could possibly dig into the seat if the seat cushion is soft. However, the test report cited by the Alliance does not clearly show that this is the case. Moreover, none of the test reports noted this as an issue. We also note that even if it were to be an issue, it would not arise frequently because all rear DSPs under 10,000 pounds (except side-facing seats) are required to have Type 2 belts. In any case, if this is a concern for a manufacturer, it can certify to the body block compliance option. Therefore, the agency declines to implement a redesign of the bridged pull yoke.

vii. Clarifying Attachment to Force Actuator

The type of seat belt dictates where the force actuator attaches to the FAD. For Type 2 seat belts, the force actuator is connected to separate connection points on the torso and lap portions of the FAD. The actuator is connected to the torso via a torso pull yoke; specifically, the actuator is connected to the eye bolt attached to the pull bracket.⁵⁴ The actuator is connected to the pelvis via a through hole on the pelvis.⁵⁵ For Type 1 seat belts, the force actuator is connected to a bridged pull-yoke that is used to connect the attachment points of the torso and lap portions of the FAD (so that they are jointly pulled). The drawing package docketed with the NPRM included a single drawing labeled "FAD 2—Bridged Pull Yoke." The bridged pull yoke is attached to the eye bolt and through hole of the FAD and the test

load is applied to the second through hole on the bridged pull yoke.

The proposed regulatory text did not clearly identify where the actuator would be connected to the FAD. For Type 2 seat belts, the regulatory text specified that the test forces should be applied "to the yoke attached to the torso of the FAD1 or FAD2 and to the eyelet attached to the pelvis of the FAD1 or FAD2." For Type 1 seat belts, the regulatory text stated that the forces should be applied "to the bridged pull yoke."

Comments

EvoBus GmbH (EvoBus)⁵⁶ commented that either the regulatory text or the drawings should be revised to clearly identify where the forces are to be applied, and that the bridged pull yoke should be explicitly marked to ease the understanding and preparation of the test.

Agency Response

NHTSA has modified the proposed regulatory text and drawings to make them clearer. The regulatory text has been modified to use the same part names used in the design drawings (*e.g.*, eye bolt). We also modified the bridged pull yoke drawing to clarify the attachment points for the torso, pelvis, and actuator. Because the same bridged pull yoke is used for the FAD 1 as is used for the FAD 2, we have added a drawing for the bridge pull yoke (NHTSA221-210-27) to the finalized drawing package for the FAD 1. There is a drawing (NHTSA221-210-27J) depicting the bridged pull yoke in the drawing package for the FAD2.

However, we are not specifying exactly how the actuator will be attached to these parts of the FAD because this piece of laboratory equipment could vary (*e.g.*, different chains or other material could be used to transfer the required load) depending, for example, on whether seat belt anchorage strength testing is performed to failure (as some commenters indicated they do) or testing just to FMVSS No. 210 performance requirements. This is consistent with the current specification of the body blocks in the standard, which also do not specify how the actuator is attached to the body blocks.

viii. Human Form Design

The NPRM stated that one of the advantages of the FAD is that it is more representative of the human form than the upper torso and pelvic body blocks.

We also identified other advantages of the FAD over the body blocks. We noted that the FAD geometry does not put an unrealistic bending force on the belt buckle, and that the FAD does not have sharp edges, reducing the likelihood that the seat belt will break during testing. We also noted that the FAD does not result in as much seat belt spool-out as seen with the body blocks, thereby eliminating the problem of bottoming-out the hydraulic cylinders during the test, and that the FAD should be easier and quicker to position than the body block, potentially decreasing test costs.

Comments

EMA, DTNA, and an individual commenter to the SNPRM (Jung Ho Yoo) commented that the NPRM did not justify why the human form design would be an advantage for compliance testing. EMA stated that the scope of FMVSS No. 210 only includes seat belt anchorages and that the seat belts that contact vehicle occupants are regulated by FMVSS No. 209, "Seat belt assemblies,"⁵⁷ and that because the anchorage strength test does not require use of the seat belt, any potential advantages related to belt breakage may not be relevant. EMA also stated that NHTSA failed to explain why the FAD transfers test loads any more effectively than the body blocks. DTNA similarly commented that resemblance to the human form may not be relevant when testing strength of seat belt anchorages which do not come into contact with occupants.

Agency Response

NHTSA agrees that the NPRM was not clear on this point. We clarify that we believe that the human form design is advantageous in that its more realistic features decrease the risk of problematic interactions between the test device and the belt/vehicle. We also note that the human form of the FADs could allow for testing of future seat belt designs with unconventional seat belt geometries (such as four-point and five-point seat belts) that cannot be accommodated by the current body blocks. Primarily, however, we believe that the advantages of the FAD will be related to ease and repeatability of testing. The agency believes that the FAD resolves many existing test-related issues with the body blocks. The docketed test reports note several advantages of the FAD. It does not put an unrealistic bending force on the belt buckle, unlike the pelvic body block. The FAD lacks the sharp edges of the pelvic body block,

No. 210 Rulemaking, pgs. 13–15. MGA Research Corp., Sept. 11, 2013 (Report No. .207/210-MGA-2013-001).

⁵³ FMVSS No. 207 Indicant Test, General Motors Corp., 2006 Chevrolet Express Bus, NHTSA No. C60100, pgs. 40–72. General Testing Laboratories, Inc. May 2, 2006 (Report No. 207-GTL-05-009).

⁵⁴ Drawings NHTSA221-210-04 (FAD 1—TORSO PULL YOKE) and NHTSA221-210-04J (FAD 2—TORSO PULL YOKE).

⁵⁵ Drawings NHTSA221-210-02 (FAD 1—BODY—PELVIS) and NHTSA221-210-02J (FAD 2—BODY—PELVIS).

⁵⁶ After receiving comments from EvoBus they became Daimler Buses GmbH.

⁵⁷ EMA referenced FMVSS No. 208, but we understand it to have meant FMVSS No. 209.

which reduces the likelihood of the seat belt buckle or webbing material (or the material used to replace the seat belt webbing during testing) breaking during testing. In addition, the current body blocks move independently of each other, and the agency's test laboratories have indicated that sometimes the increased range of motion associated with the torso body block can be problematic (e.g., the hydraulic cylinders used to pull the belts can reach the end of their stroke). As EMA noted, FMVSS No. 210 does not require testing with the vehicle's seat belt. Therefore, a shorter substitute belt or cable could be used to solve the problem of reaching the end of the stroke of the loading devices. Using a shorter substitute belt or cable also alleviates the problem with seat belt buckle breakage. However, for simplicity, the agency prefers conducting the compliance testing, if possible, with the vehicle's original seat belt assembly. Other benefits of the FADs are discussed elsewhere in this document.

ix. Effect on Seat Back Deformation

The NPRM did not specifically address whether there was the potential for the FAD to interact with the seat structure in a way that could affect test outcomes.

Comments

TÜV Rheinland Kraftfahrt GmbH (TUEV) and JCI had concerns related to seat structure deformation. TUEV commented that the FAD could reinforce the seat structure during tests of integrated seats (seats with seat belts that attach to the seat), which is not representative of the deformation that would occur in a real accident and could potentially lead to different results than testing with the body blocks (*i.e.*, where the anchorages would fail when tested with the body blocks, but pass when tested with the FAD). JCI stated that the FAD structure could interfere with the manufacturer's testing protocols that are intended to gauge backrest deformation.

Agency Response

The agency's research tests demonstrate that the FAD pulls away from the seat back during testing and does not reinforce the seat structure. In fact, the FAD would more accurately represent the dynamics of an occupant in a real crash event because of its geometry: it hinges at the H-point and it is not two independent blocks. TUEV and JCI did not provide any supporting information on the protocols they used for gauging backrest (seat back)

deformation with the FAD versus the body blocks, which limits our ability to respond in more detail to this concern.

x. Missing Tolerance Values

The drawing packages for the FAD1 and the FAD2 were docketed in conjunction with the NPRM. In the NPRM, we stated that the drawing packages were sufficiently detailed to allow manufacturers to fabricate the FAD1 and FAD2.

Comments

JCI commented that the drawing packages are incomplete due to the lack of tolerance designations in numerous places. They suggest that this incomplete information be remedied before finalizing the FAD.

Agency Response

NHTSA has added tolerances to all dimensions specified in the finalized drawing package. If a tolerance is not indicated next to a specified dimension, an overall tolerance summary is specified at the bottom of the drawing page.

xi. Design Drawings and Supplemental 3-D Data

NHTSA docketed the FAD design drawings with the NPRM. The proposed regulatory text incorporated these design drawings by reference. The agency was unable to docket the computer-aided design (CAD) files of the FAD drawings or three-dimensional data because the docket does not accept CAD files. In the past NHTSA has generally not incorporated by reference 3-D CAD data for FMVSS documentation or Part 572 anthropomorphic test devices, although it has not infrequently made 3-D geometric rendering solid models available to the public for reference purposes.⁵⁸

Comments

Both American Honda Motor Co., Inc. (Honda) and the Alliance suggested in their comments that the 3-D drawing data for the FAD1 and FAD2 be made readily available. Honda stated that the 3-D drawings were necessary to allow manufacturers to fully assess the proposed test procedures and detect potential issues that would need to be addressed before it is finalized. The Alliance commented that provision of

the 3-D CAD data could reduce the cost and lead-time associated with the procurement of the FADs.

Agency Response

During the NPRM comment period the agency provided 3-D solid models of the torso and pelvis portions of the FADs to entities that requested them in response to the NPRM. A memo was filed in the docket documenting the requests and agency response.⁵⁹ In the memos, the agency additionally stated that it would provide the files to others upon request. We received requests from, and provided the files to, MGA Research Corp., Faurecia, General Motors, RCO Technologies, Jasti-Utama, Inc., and SCHAP Specialty Machine.

We believe that the drawing package is sufficiently detailed to allow manufacturers to fabricate the FAD1 and FAD2. During development of the NPRM, NHTSA compared a FAD1 and FAD2 manufactured by Denton ATD using the drawing package to a FAD1 and a FAD2 that pre-existed the drawing package.⁶⁰ Based upon this inspection, the agency determined that the devices were sufficiently equivalent.

In addition to the two-dimensional engineering drawings being incorporated by reference in the final rule, NHTSA is providing, as supplemental documentation, 3-D solid models. NHTSA has regenerated these 3-D geometric renderings by scanning our physical FADs. These supplemental reference materials are summarized in Table 3. These files are not being incorporated by reference into 49 CFR 571.5 and are therefore will not be part of the FAD specification. Instead, they are intended only for reference purposes (*e.g.*, to facilitate fabrication). The files are available via NHTSA's FTP site.⁶¹ A memo to this effect is also being placed in the docket for this final rule.

We note that some minor changes have been made to the proposed drawings. Some dimensions on NHTSA221-210-02 and 03 (FAD 1 Body Torso and FAD 1 Body Pelvis) and NHTSA221-210-02J and 03J (FAD 2 Body Torso and FAD 2 Body Pelvis) have been modified slightly to match the dimensions of the scanned 3-D solid models. The revised dimensions are related to the molded portions of the FADs. The hip clip drawings were also modified to match the redesigned hip clips that are installed on the FADs at

⁵⁸ See, e.g., 77 FR 11651 (Feb. 27, 2012) (final rule for Hybrid III 10-year-old child test dummy) ("[T]hree-dimensional engineering aids are available from the NHTSA website for complex dummy part dimensions. While these aids are not part of this specification, they can be used by the public for reference purposes.").

⁵⁹ NHTSA-2012-0036-0003, NHTSA-2012-0036-0020.

⁶⁰ A document describing the inspection criteria used to make this determination has been placed in the docket for the NPRM.

⁶¹ <https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/>.

NHTSA's Vehicle Research Test Center (VRTC).

TABLE 3—DESIGN REFERENCE DOCUMENTATION

Title	Link
FAD Drawing Package	https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/Seat-Belt-Assembly-Anchorage/FAD-Drawing-Package-April-2024.zip .
FAD Drawing Package—2D AutoCAD	https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/Seat-Belt-Assembly-Anchorage/FAD-AutoCAD-DWG-Files.zip .
FAD Drawing Package—3D Inventor Format.	https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/Seat-Belt-Assembly-Anchorage/FAD-Inventor-Files.zip .
FAD Drawing Package—3D STEP Format.	https://www.nhtsa.gov/file-downloads?p=nhtsa/downloads/Seat-Belt-Assembly-Anchorage/FAD-3D-STEP-Files.zip .

2. FAD Test Procedure

i. Positioning Procedure

The proposed regulatory text specified how to adjust the seat and position the FAD at the outset of the strength test. The proposed regulatory text specified that the seat back would be placed at the manufacturer's design seat back angle (as measured by SAE J826 (July 1995) with the seat in its rearmost and lowest position). The NPRM essentially proposed that the FAD be placed so that its midsagittal plane is vertical and aligned with the center of the seat. Although the term "Midsagittal plane" was not defined in the proposed regulatory text, it is defined in FMVSS No. 208 S16.3.1.3 as "the vertical plane that separates the dummy into equal left and right halves." The proposed regulatory text defined and used two different terms to refer to the center of the seat: "longitudinal centerline of a forward and rear-facing seat" and "seat centerline." Both were defined with reference to the SgRP, and both essentially referred to the center of the seat.

Comments

The Alliance questioned how the FADs should be placed in the seat if the seat centerline does not align with the SgRP. It also asked how the FAD should be placed in a seat with multiple designated seating positions when the lateral seat width is not equally designated by design.

Agency Response

We first note that the NPRM inadvertently used two different terms, "longitudinal centerline" and "seat centerline," to refer to the same concept. The final rule clarifies this discrepancy by using a new term, "seat reference plane," which is defined as "the vertical plane that passes through the SgRP (as defined at 49 CFR 571.3) and is parallel to the direction that the seat faces." This is essentially the same procedure

NHTSA intended to specify in the NPRM—namely, positioning the FAD so that the midsagittal plane is aligned with the vertical plane passing through the SgRP in the same direction the seat faces. We decided to use the SgRP and not the H-point for consistency with the proposed body block test procedure. Both Alliance's concerns are addressed by this definition because the SgRP does not depend on either the seat centerline or width. The final rule also adds a definition of "midsagittal plane" specific to the FAD because the definition of it in FMVSS No. 208 refers to a test "dummy."

We also note that the final rule modifies the proposed seat adjustment. In the NPRM, the agency proposed a seating procedure for the FAD that specified, in addition to placing the seat at the rearmost position, the seat back would be adjusted to the manufacturer's design angle and the seat to its lowest position. Now that the agency is reinstating the option to test with the body blocks (with a refined test procedure), we are making the seat adjustment provisions consistent with the manufacturer's SgRP, since the body block zones use the SgRP as the reference point. Specifically, we are adding regulatory text to clarify that the seat is to be adjusted to the rearmost normal riding or driving position, to make the H-point position consistent with the SgRP. The rearmost normal riding or driving position is specified by the manufacturer and includes all modes of seat adjustment, including horizontal, vertical, seat back angle, and seat cushion angle.

To this end, we have added a specific regulatory text section on seat adjustment that applies to both the FAD and body blocks. We note that in the NPRM, the seat was proposed to be placed in its rearmost and lowest position when using the FAD, but no details were provided as to how such a position would be achieved. By specifying a seat position consistent

with the SgRP, the agency is fully articulating a well-defined seat position with which all manufacturers should be familiar. This information is typically already requested prior to testing by OVSC.

ii. Selections of FAD1 or FAD2 and Contact Between Adjacent FADs and Vehicle Interior

The NPRM proposed an iterative procedure for determining which FAD NHTSA would use when simultaneously testing the seat belt assembly anchorages of adjacent seats. Specifically, the NPRM specified positioning FAD1s on each seat, and if, "prior to conducting the test, there is contact between the FAD1s, or if FAD1s cannot be positioned side-by-side due to contact, replace an inboard FAD1 with a FAD2."⁶² This would not have disallowed contact once the test had started (i.e., once the test force had begun to be applied). However, because the proposal simply specified that contact was not allowed "prior to conducting the test," it was not clear whether this applied before and/or after the preload force was applied to the FADs. The proposal also did not disallow (or specify any procedures with respect to) contact between FADs and the vehicle interior. Finally, the proposal did not contemplate novel seating configuration or vehicles without a driver's designated seating position.

Comments

Honda requested clarification on whether contact between FADs during testing is allowed. Honda also requested clarification on whether contact between the FAD and the vehicle interior would affect the selection, replacement, or seating procedure of the FAD. FSC similarly questioned what constituted "contact," and whether this term referred to any part of any FAD touching another FAD, or whether

⁶² S5.3(a) (proposed).

contact between the FADs is permitted so long as it did not interfere with their functionality or independent operation. FSC also inquired about the possibility of changing the size of the FAD1.

Agency Response

The agency would not allow adjacent FADs to contact each other at all at the onset of testing, *i.e.*, when the FADs have been positioned, but prior to the preload being applied. The hierarchical procedure used to determine which FAD to place in each seat if contact occurs during placement should provide ample room to eliminate contact during testing of the anchorages. However, although not expressly addressed in the regulatory text, contact between adjacent FADs once test preloads have begun is not prohibited. Although we believe incidental contact of the FADs during preload and loading is unlikely, we believe if it does occur the contact will not unduly influence the results and will not invalidate the test. Additionally, if a manufacturer is concerned about such incidental contact, it can choose to test with the body blocks.

As far as contact with the vehicle interior, the agency normally conducts the FMVSS No. 210 compliance tests with the vehicle doors removed so we do not encounter contact with the vehicle interior in our tests of outboard seats next to a door. For outboard seats that are not positioned next to a door, contact may also be found permissible if it does not interfere with the loading of the anchorages and attaining the required load value. Since this determination should be made on a case-by-case basis, and to avoid limiting the agency's testing options due to inconsequential contact of the FAD with the vehicle interior, the regulatory text will not address this determination of permissible contact with the vehicle interior. This aspect of the test procedure may be addressed in the laboratory test procedure for FMVSS No. 210.

The agency declines to change the size of the FAD1. The size of the FAD1 did not present any problems in the testing the agency conducted in support of this rulemaking. In any case, if a DSP is too narrow to accommodate the FAD1, the smaller FAD2 may be used. If, on a seat with multiple DSPs, each DSP is occupied by a FAD2, we believe there is minimal potential for contact at preload because the width of the FAD2 at its widest point (the shoulder width) is $11.78 \pm .05$ in ($299.2 \text{ mm} \pm 1.27 \text{ mm}$); based on NHTSA's experience with testing and knowledge of the vehicle market, this is less than the width of

many or most DSPs. A DSP less than a foot in width would be exceedingly small, and smaller than the minimum required width for a DSP.⁶³

Finally, with respect to the iterative procedure proposed to determine if the FAD1 or FAD2 would be used in a particular seat, consideration was not given at the time of the NPRM to the potential for novel seating configurations and vehicles without a driver's designated seating position. For forward and rearward facing seats, the final rule maintains the same overall hierarchy of prioritizing inboard seats for the use of the FAD2, to eliminate contact between FADs in adjacent seats. However, the reference to driver's side versus passenger side has been replaced by right-hand side versus left-hand side, as viewed from the direction of the seat. Additional regulatory text has been added to address non-forward and non-rearward facing seats.

iii. Use of FAD2 on Buses and Heavy-Duty Trucks

As previously discussed, NHTSA developed the FAD2 for use at DSPs too narrow to accommodate the FAD1, although in the proposed seating procedure NHTSA would first attempt to position FAD1s in all seats.

Comments

EvoBus commented that when testing buses, it would be preferable to specify use of the FAD2 for double seats because in coaches the situation regarding shoulder width is similar to the shoulder width in the rear seats of passenger cars.

FSC noted that its standard passenger bus seat width is 17.75 inches (45.085 cm), which is the same width as the FAD1. Based on the proposed seating procedure, FSC commented that most of its DSPs would require a FAD1 to be replaced by the FAD2 in the outboard DSP to avoid contact. Based on this concern, FSC questioned if it was possible to change the size of the FAD1.

Navistar expressed concern regarding the potential effect on the test results if a FAD1 is replaced with a FAD2, because it could differ from what was used when testing with the current body blocks (larger pelvic block vs. smaller pelvic block) for a given seat. Navistar believes if this were the case, it would result in the need to identify these testing differences for each seating position and revalidation of these vehicles, and potentially some redesign

or reengineering if this testing difference changes the test results.

Agency Response

The agency declines to accept the recommended changes. NHTSA does not agree with the need to limit the testing of bus seats with multiple DSPs to testing solely with the FAD2, as suggested by EvoBus. There is no regulatory limit on bus seat width, so certain bus seat designs may allow for simultaneous testing with the FAD1 and FAD2 seated adjacent to each other. Therefore, rather than limit these bus seats to testing solely with the FAD2, the agency prefers an objective protocol for determining when to replace a FAD1 with a FAD2. We also decline to change the size of the FAD1 because the need for a smaller test device is met by the specification and use of the FAD2. In response to Navistar's comment, there is no indication that testing results differ depending on which FAD is used; NHTSA tested both sizes of the FAD in various light vehicles, and there were no test failures with either. With respect to heavy duty vehicles, NHTSA only tested with the FAD1, although the FAD2 was tested in a Chevrolet Express Bus, which, with a GVWR of 9,600 lb, is nearly into the heavy vehicle category. None of these tests resulted in failures. In addition, design margins should be sufficient to accommodate slight differences in force vectors between the FAD1 and FAD2. Nonetheless, if heavy duty manufacturers have vehicles for which the FAD1 does not fit under our test procedure, and they do not feel comfortable certifying with the FAD2, they may continue to use the body blocks.

iv. Bottoming Out of Hydraulic Cylinders

Test laboratories typically use hydraulic cylinders to achieve the required pull force. The NPRM stated that the FAD would eliminate the problem of bottoming out of the hydraulic cylinders that sometimes occurs when performing the anchorage strength test using the current body blocks.

Comments

EMA commented that the FAD may make hydraulic cylinders more likely to bottom out during testing of medium- and heavy-duty vehicles because the FAD may cause more hydraulic cylinder travel to take up the slack necessary to apply loads to the anchorages for suspension seats and seat belt assemblies using tethers.

⁶³ The minimum DSP width (for most vehicles with a GVWR less than or equal to 10,000 lb) is 330 mm (13 inches). See 571.3 and 571.10.

Agency Response

When the NPRM was published, NHTSA had not conducted any indicant tests with the FAD on heavy vehicles. The agency has since conducted FAD testing on two air suspension seats (one school bus driver's seat with a Type 2 seat belt and one motorcoach bus driver's seat with a Type 1 seat belt). In those tests, there was no indication that the FAD introduces more slack than the current body blocks. Based on observations during testing, the cylinders did not undergo additional travel and bottoming out of the hydraulic cylinders did not occur. The agency believes that the increased range of motion of the current body blocks is greater than the FAD and would more likely result in the hydraulic cylinders reaching the end of their stroke than with the FAD.

3. Repeatability

NHTSA assessed the repeatability of the FAD in two different ways. First, Karco assessed the consistency of the FAD seating procedure. Different test technicians positioned the FAD1 multiple times in nine different vehicles (ranging from two-seat sports cars to light duty trucks).⁶⁴ The technicians were provided a written copy of the seating procedure and no additional instructions. Once each technician had seated a FAD in a test vehicle, a Faro Arm (an articulated measuring arm with six degrees of freedom) was used to record the precise location of seven points on the FAD. Second, NHTSA evaluated the repeatability of the forces applied to the anchors using the FAD1.⁶⁵ We conducted four anchorage strength tests, using a rigid test seat in a test rig, with load cells located at the seat belt anchorages and a few other locations (e.g., to measure the tensile load for the shoulder belt webbing). In each test, the FAD1 was positioned, belted, and pulled per the proposed test procedure. (NHTSA used the FAD1 for these repeatability evaluations; it has no reason to believe that similar results would not be achieved with the FAD2.)

Comments

The Alliance commented that the repeatability analysis using a rigid test

seat looks reasonably acceptable.⁶⁶ JCI commented that the FAD improves repeatability and reduces the potential for interference between the lap and torso blocks.

Agency Response

NHTSA concludes that use of the FADs leads to sufficiently repeatable results. Below we briefly summarize the results of NHTSA's testing. More information, including details on the methodology and results, is available in the cited reports in the rulemaking docket.

With respect to the consistency of the seating procedure, of the twenty-seven positionings of the FAD (three technicians $\times$ 9 vehicles), the average variance for positioning the FAD was less than $\frac{1}{4}$ inch. We believe that this variability in seating the FAD is acceptable. In comparison, FMVSS No. 208, "Occupant crash protection," at S10.4.2.1, specifies a 12.7 mm ($\frac{1}{2}$ inch) tolerance for the H-point.⁶⁷

Accordingly, variability of less than $\frac{1}{4}$ inch in seating the FAD is well within the same range of tolerance as specified in FMVSS No. 208 for positioning the H-point. This result is even more compelling considering that the technicians performing the FAD test were unaccustomed to the seating procedure, and that the results were based on a comparison of three points of the FAD surface, not just one point.

NHTSA also concludes that the forces applied to the seat belt anchorages using the FAD are repeatable (over repeated trials on the same seat and vehicle body design). To evaluate the repeatability of the forces applied to the anchorages, NHTSA used three different methodologies: the coefficient of variation, a general linear model, and a mixed model. Each of these analyses indicated that the test device applied loads to the anchorages in a repeatable manner. For example, the coefficient of variation analysis showed that the test procedure was repeatable, with all data channels except two rated "excellent." Of the remaining two, one data channel was rated "good", and another was rated "acceptable." The "acceptable" data channel (retractor Y-axis) had a large measurement error relative to the other channels as seen by the "acceptable" coefficient of variation. However, the scale of the mean value,

around 890 N (200 lb), is relatively small compared to the 13,345 N (3,000 lb) belt load, so the relatively larger measurement error has a minor effect on the overall test results. The general linear model and the mixed model similarly indicated that the forces measured from the 16 channels tend to be consistent and repeatable over time, and there are no statistically significant differences across tests.

4. Equivalence With the Body Blocks

In the NPRM, NHTSA stated that it believed use of the FADs would not affect the stringency of the strength test and would not affect the likelihood of a vehicle meeting or not meeting the standard's strength requirements. NHTSA reported the results of its indicant testing showing vehicles that met the anchorage strength requirements using the body blocks also met those strength requirements using the FAD.⁶⁸

Comments

Commenters expressed concerns regarding whether the proposed FAD would perform equivalently to the existing body blocks. Comments from manufacturers and suppliers of heavy-duty vehicles focused on whether the FAD would perform equivalently in heavy-duty applications.

Several medium- to heavy-duty vehicle manufacturers, associations, and their suppliers commented in response to the NPRM on the lack of testing in these vehicles. They pointed out differences between heavy and light-duty vehicles and questioned whether heavy-duty vehicles would remain compliant if tested with the FAD.

DTNA, Navistar, and EMA commented on the unique characteristics of heavy-duty vehicles and seating systems and noted that NHTSA's testing did not include heavy-duty vehicles. For example, EMA stated there was no data indicating that existing seat belt assembly anchorages in heavy trucks would remain compliant if the FAD is used, and pointed out that heavy-duty vehicles have different seating and seat belt assembly systems than light-duty vehicles, citing the use of larger cabs, upright seating configurations, unique seat belt systems and anchorages, and air suspension seats (which utilize tethers to connect the seat belt assembly to the anchorages). EMA further commented (on the 2018 notice of availability) that the additional technical reports NHTSA docketed did not alleviate its concerns because they

⁶⁴ "Final Report: Development of a Combination Upper Torso and Pelvic Body Block for FMVSS 210 Test, Revision A," May 22, 2003, KARCO Engineering, LLC, pgs. 10, 13, 29 (NHTSA–2012–0036–0002).

⁶⁵ "Repeatability Analysis of the Forces Applied to Safety Belt Anchors Using the Force Application Device" (DOT HS 811 139) (NHTSA–2012–0036–0002, pp. 977–995).

⁶⁶ NHTSA understands this comment to refer to NHTSA's repeatability analysis *supra*, n. 66. The KARCO report also contains a repeatability analysis of the forces applied to the anchorages (NHTSA–2012–0036–0002, pp. 12–33). See *supra* note 30.

⁶⁷ H-point means the mechanically hinged hip point of a manikin which simulates the actual pivot center of the human torso and thigh.

⁶⁸ See NPRM at pgs. 19157–58 and section IV.

did not contain any data with respect to the feasibility of the FAD on the medium- and heavy-duty trucks built by its member companies, and suggested that they did not address the unique aspects of the broad range of heavy-duty vehicles such as regional or line-haul tractors, refuse trucks, construction trucks, parcel delivery step vans, or many other applications that would be affected. EMA stated that if NHTSA proceeds with amending FMVSS No. 210 based only on the existing rulemaking record, it must exempt vehicles with a GVWR greater than 10,000 pounds from the new requirements. Navistar similarly stated that NHTSA's testing did not apply to its highly customized vehicles (e.g., a wide variety of seating types and locations).

EMA, Navistar, and Hino Motors, Ltd. (Hino) commented that replacing the current body blocks with the FAD would impact the levels and/or directions of the forces that are applied to heavy truck seat belt assembly anchorages during compliance testing. For example, DTNA stated that it was unclear whether the FAD would introduce unique seat loads and seat belt loads not observed in testing with the body blocks in heavy-duty applications.

Commenters also questioned the equivalence of the FAD that were not limited to a specific vehicle type. The Association of Global Automakers (Global) commented that the results of the nine indicant tests reported in the NPRM do not provide a sufficient basis for using the current and proposed test devices interchangeably. JCI commented that more robust comparison testing should be conducted because the testing conducted on bench seats using the

FAD and the current body blocks simultaneously on the outboard seats may not accurately represent the performance of the seat belt assembly anchorages when the adjacent designated seating positions are tested simultaneously with the same test device. Global noted that the NPRM identifies several aspects (e.g., seat belt angle, spool-out, and placement) in which testing with the FAD differs from testing with the body blocks and stated that it is possible that such differences could affect test results. JCI commented that the testing NHTSA conducted does not cover the full range of seating structures and test conditions in use, and the FAD may interact with the seating configurations in a way that impacts seating and/or seat belt assemblies. JCI also stated that the FAD allows for more movement in the upper torso than the current body blocks resulting in a different vector of force on the seat structure and potentially also on the anchorages. The Alliance commented that there can be significant differences in the anchorage loads between the FAD and the current body blocks and that vehicle seats showed significant variability in the anchorage loads for some tests. The Alliance pointed to the agency's comparison tests of the 1996 Ford Taurus outboard lap anchorage in which the loads obtained using the FAD averaged 31% lower than the average of the loads obtained using the existing body blocks. Likewise, the comparison tests on the 2003 Honda Pilot, indicated a similar variability of 37%. The Alliance stated that even though the loads recorded in these cases were lower for the FAD, the level of variation⁶⁹ was troubling and needs to be examined further.

Agency Response

The agency recognizes that at the time the NPRM was published, it had not conducted any indicant tests with the FAD on heavy vehicles. However, in response to comments on the NPRM, NHTSA subsequently performed three indicant tests with the FAD on the driver's seats in three different heavy-duty buses. The anchorages of all three seats met the FMVSS No. 210 anchorage strength requirements.

We believe that we have conducted sufficient testing of the FAD in heavy-duty vehicles to conclude, with a reasonable degree of confidence, that the FAD is equivalently stringent to the existing body blocks in these vehicles. Three FAD tests were performed on seats in buses with a GVWR >10,000 lb (two school bus driver's seats, a pedestal-type seat and air suspension seat, and a motorcoach driver's air suspension seat). The school bus seats were both equipped with Type 2 seat belts and the motorcoach seat was equipped with a Type 1 seat belt. The anchorages of all three seat belts met the FMVSS No. 210 performance requirements when tested with the FAD. Some of the tested seat types are similar to those found in heavy-duty trucks (e.g., air suspension, pedestal type seats), and the use of the FAD test device did not affect the compliance of the seat belt assembly anchorages. These results are also summarized in section IV.B and in Table 4. The evidence from the agency's testing program shows that heavy vehicles certified to FMVSS No. 210 strength requirements with the body blocks are still compliant when tested with the FAD. We have no data to support that the use of the FAD would affect the compliance of a vehicle.

TABLE 4—INDICANT ANCHORAGE STRENGTH TESTS TO EVALUATE FAD EQUIVALENCE

Vehicle	Vehicle type	Test device(s) ⁷⁰	Result
Research Docketed with the NPRM			
2005 VW Passat	Light	Body Blocks (2) FAD 1 (2) FAD 2 (1)	Pass.
2005 Acura RL	Light	Body Blocks (2) FAD 1 (2) FAD 2 (1)	Pass.
2005 Toyota Avalon	Light	Body Blocks (2) FAD 1 (2) FAD 2 (1)	Pass.
2005 Buick Lacrosse	Light	Body Blocks (2) FAD 1 (2) FAD 2 (1)	Pass.

⁶⁹ The agency understands this variation to refer not to variability among the measured loads from the FAD (discussed below in section V.A.3,

Repeatability), but instead to refer to a comparison of the anchorage loads observed with the FAD and the anchorage loads observed with the body blocks.

⁷⁰ The number in parentheses indicates the number of DSPs tested with that test device.

TABLE 4—INDICANT ANCHORAGE STRENGTH TESTS TO EVALUATE FAD EQUIVALENCE—Continued

Vehicle	Vehicle type	Test device(s) ⁷⁰	Result
2005 Chrysler 300	Light	Body Blocks (2) FAD 1 (2) FAD 2 (1)	Pass.
2005 Chevy Express Small Bus	Light	Body Blocks (6) FAD 1 (5) FAD 2 (4)	Pass.
2005 Chrysler Town and Country Minivan	Light	Body Blocks (3) FAD 1 (3) FAD 2 (1)	Pass.
2005 Ford F-150 Super Crew Cab Pick-up	Light	Body Blocks (2) FAD 1 (2) FAD 2 (2)	Pass.
2005 Chevy Aveo	Light	Body Blocks (2) FAD 1 (2) FAD 2 (1)	Pass.
Research Docketed After the NPRM			
2000 MCI 102-EL3 Series Motorcoach	Heavy	FAD 1 (1)	Pass.
2012 Blue Bird All American D3 RE School Bus	Heavy	FAD 1 (1)	Pass.
2012 IC CE School Bus	Heavy	FAD 1 (1)	No test.
2012 Honda Fit	Light	Body Blocks (1) FAD 1 (1)	Pass.
2012 Mitsubishi I-Miev	Light	Body Blocks (1) FAD 1 (1)	Pass.
2012 Chevrolet Suburban	Light	Body Blocks (2) FAD 1 (2)	Pass.
2013 Ford Fusion	Light	Body Blocks (3) FAD 1 (2)	Pass.
2013 Ford Fusion	Light	FAD 2 (1)	Pass.
2013 Ford C-Max	Light	Body Blocks (3) FAD 1 (2)	Pass.
2013 Ford C-Max	Light	FAD 2 (1)	Pass.
2012 Subaru Impreza	Light	Body Blocks (3) FAD 1 (2)	Pass.
2012 Subaru Impreza	Light	FAD 2 (1)	Pass.

In response to commenters who expressed concerns that the FADs would introduce different load vectors or that the test load would be distributed differently among the anchors compared to the body blocks in heavy and/or light-duty applications, we acknowledge that given the geometry and construction of the FAD it will not apply the test forces to the seat belt assembly anchorages in exactly the same way as the current body blocks. The load data in the KARCO report does show that the FAD distributes the test loads somewhat differently than the body blocks. On average, the FAD produced lower forces at the outboard shoulder and d-ring and higher forces at the outboard lap belt anchorage. These differences can be attributed to the differences in geometry and range of motion of the two test devices. Because the FAD has two pieces connected in a manner that restricts their relative articulation and the current body blocks move independently of each other, the range of motion of the devices is inherently different. In addition, the torso body block is supported in air by the torso portion of the seat belt; thus,

the force vectors and load distributions on the shoulder belt portion will differ from those with the FAD. (For these reasons we also disagree with JCI's comment that the FAD allows for more movement in the upper torso.) However, while the force vectors or load distribution between the two test devices may not be the same, the total load on the seat belt assembly anchorages is the same for both the FAD and the body blocks. Moreover, as discussed in more detail below, the indicant test data shows that the FAD performs equivalently to the body block.

To respond to Global's comment that the 9 indicant tests docketed with and discussed in the NPRM are not sufficient to establish the equivalency of the FAD, and JCI's comment that this testing did not cover a full range of seating structures, NHTSA conducted additional testing with the FAD on passenger vehicles (as well as the additional heavy-duty testing discussed above) to allow for a more robust evaluation of the FAD1 and FAD2 with different seat belt assembly configurations. This additional testing included five passenger cars and a large

SUV. In total ten different vehicle makes were represented in these tests and the earlier nine indicant tests. Therefore, we believe our testing with the FAD has been reasonably representative of the population of seats in light vehicles. To address JCI's comment that the original indicant tests were not conducted as an actual compliance test would be (because they mixed both the FAD and the body blocks), in this additional testing we tested three matched pairs of vehicles. One vehicle in each pair was tested with only the body blocks, and the other vehicle in the pair was tested with only the FAD.⁷¹ There were no test failures in any of these additional indicant tests. All the indicant tests involving the FAD are summarized in section IV.B and in Table 4.

NHTSA performed testing in a variety of vehicles—both light- and heavy-duty—to evaluate equivalence. We did not record failures in any of these tests. These results suggest to us that any

⁷¹ The testing was conducted on rear seats and the comparison vehicles were the same vehicle model and model year but with different battery options (e.g., Ford Fusion Hybrid and Ford Fusion Energi).

differences in test performance related to use of the FAD—such as differences in load vectors, seat belt angle, spool out, or interaction with the seating configuration—do not meaningfully affect the test results, and, most importantly, do not affect the ultimate test outcome. In addition, in real life, the seat belts and anchorages must accommodate occupants of varying sizes, sitting in a variety of sitting and seat positions; design margins for existing seating and restraint systems should be sufficient to accommodate this variation, which should also be sufficient to compensate for any effects due to differences in test performance related to the FAD.

The adequacy of existing design margins is supported by the history of NHTSA's anchorage strength compliance testing program. In the agency's forty-plus year history of testing for compliance with the anchorage strength requirements, test failures have been uncommon. According to the agency's records, for testing from 1972 to the present there were 327 compliance tests for FMVSS No. 210 and only 23 test failures.⁷² The agency concludes that this testing is sufficient to establish, to a reasonable degree of confidence, that the FAD performs equivalently to the body blocks. Moreover, we are also retaining the existing body blocks and providing manufacturers the ability to choose the device to which they will certify compliance.⁷³

5. Stakeholder Familiarity With the FAD

At the time of the NPRM, manufacturers and other stakeholders did not have access to the FAD for evaluation because the agency had possession of the only FADs in existence. The agency docketed the FAD design drawings with the NPRM.⁷⁴

Comments

The Alliance, Navistar, DTNA, EMA, Hino and Honda all noted or alluded to

⁷² Based on a search of NHTSA's electronic records. This tally includes failures relating to any of the FMVSS No. 210 requirements, as well as what the agency would typically consider "non-tests" (*i.e.*, tests that could not be completed due to equipment or testing issues), so the number of actual test failures for the anchorage strength requirements is likely lower than this.

⁷³ Furthermore, any concern about testing with the FAD resulting in different test outcomes than testing with the body blocks is obviated by the fact that the final rule provides manufacturers the choice of compliance options. In any case, as we explain here, after much testing, we have no evidence that the FAD results in different test outcomes.

⁷⁴ See NHTSA–2012–0036–0002, "Final Report: Development of a Combination Upper Torso and Pelvic Body Block for FMVSS 210 Test," Appendix E.

the lack of knowledge or experience testing with the FAD. DTNA commented that the suppliers and availability of the FADs are unknown. FSC asked if there would be "approved manufacturers" of the FAD. The Alliance suggested reopening the comment period to allow manufacturers time to procure and test with the FAD and stated that initial quotes from Humanetics indicated a 26-week lead-time before the first products can be delivered. The Alliance suggested that the FADs be made available for round-robin testing. Both Honda and the Alliance suggested conducting a technical workshop to demonstrate the use of the FAD and go over any technical questions and concerns associated with it.

In response to the SNPRM, JCI noted that it had conducted preliminary testing with the FAD and had not experienced any of the technical concerns raised in its NPRM comments. It stated that the FAD may develop into a feasible test device which helps to reduce variability, set-up time, and testing costs.

Agency Response

NHTSA understands the commenters' concerns that at the time the NPRM was published the FAD was not available. However, the FAD design information has been publicly available since the NPRM. After the NPRM was published, two commenters asked for the 3D design drawings, and we made these available upon request (and placed in the docket a memo stating so).⁷⁵ To date, the agency has received only a limited number of requests for the 3D drawings. Manufacturers have had ample time to fabricate and test with FADs; the NPRM was published in 2012 and the 2015 SNPRM (published in 2015) explicitly stated that NHTSA was still considering replacing the body blocks with the FAD or incorporating the FAD as an optional testing tool. Moreover, the concerns with respect to a lack of familiarity with the FAD are also addressed by the decision to give manufacturers the option to continue to certify to the requirements with the body blocks.

Any supplier or manufacturer is free to manufacture the FAD, and the design information that we have made publicly available is sufficient to fabricate the FAD. With respect to the comment regarding a compliance workshop, we received no further inquiries about this possibility. With respect to the comment about round-robin testing, NHTSA will make its FADs available to

manufacturers or test laboratories upon request.

6. Testing Costs

i. Costs of Testing With the FAD

In the NPRM we estimated the cost of each FAD (FAD1 or FAD2) to be approximately \$8,000. The agency assumed that a vehicle manufacturer or test facility would purchase a set of two FAD1s and three FAD2s, and that the principal cost associated with the NPRM is the one-time purchase cost of \$40,000.

The NPRM stated that we believe there would be cost savings associated with using the FADs because they require less effort, time, and personnel to install in the test vehicle, and that over time these efficiencies would offset the one-time purchase cost of the FADs. In the NPRM, we estimated that the use of the FADs would result in a labor cost savings of \$18.75 per vehicle test and on average a time savings of 5 minutes per seat installation.

Comments

FSC, which has a small test lab, stated that it would acquire five or more FADs, which would cost at least \$40,000. Navistar commented that it has numerous test facilities and would require a dozen FADs (an initial investment of \$96,000).

The Recreation Vehicle Industry Association (RVIA) commented that most motorhome manufacturers are small-volume manufacturers, and that motorhome manufacturers faced with expanded testing using new FAD equipment would confront massively (and potentially crippling) testing costs, with minimal ability to recapture test costs by spreading them across the units sold. RVIA argued that these costs would contrast markedly with large volume automobile manufacturers, which can test one unit of a model that represents tens or hundreds of thousands of similar units produced. Both EMA and DTNA commented that it is unknown whether the test set-up with the FAD results in less effort and time in a heavy-duty truck since no testing was done on these vehicles.⁷⁶

Agency Response

Although vehicle manufacturers or test laboratories might purchase larger quantities of FADs than assumed in the NPRM to meet their testing needs, additional FADs are not necessary for

⁷⁶ Global, the Alliance, and DTNA also commented that there would be additional certification costs, not considered in the NPRM, resulting from disharmonization. This subject is discussed in section V.C.10, Regulatory Alternatives.

⁷⁵ NHTSA–2012–0036–0002.

testing based on the FMVSS No. 210 performance requirements. Test labs typically test one vehicle at a time, and vehicles typically do not have more than five adjacent seating positions (that would be tested simultaneously). In addition, we believe that the useful life of the FADs can be measured in decades because of the materials with which it is constructed, and any cost can be amortized over this long life. For vehicle designs with long production lives, such as heavy vehicles, the testing cost would be spread over many years. We recognize that smaller-volume manufacturers would find it more difficult to recover these costs. However, it is likely that small-volume manufacturers would contract out testing services, thus the cost of the purchasing the FADs would not be incurred by them directly. Another potential solution to defray cost might be for the RVIA to purchase FADs for the use of their members.

The test cost savings expected from the FAD's ease of use should apply equally as well to heavy-duty vehicles as well as light vehicles. The handling and positioning of the body blocks (mainly the torso body block) require more time and effort than seating the FAD regardless of vehicle type. The Karco final report included a section on the FAD's ease of use that discussed the installation time savings (6.75 minutes per seating position) and noted that, unlike the body blocks, it does not require multiple installation attempts. The research test reports docketed with the NPRM noted that the FADs were much easier to position than the current body blocks.

ii. Potential Re-Certification Costs

The NPRM stated that the use of the FAD would not affect the stringency of the seat belt assembly anchorage strength test.

Comments

Several vehicle manufacturers and vehicle manufacturer associations expressed concerns regarding the potential need for additional testing to ensure that the seat belt assembly anchorages certified with the current body blocks remain compliant when the FAD is used for testing.

The Alliance, EMA, Hino, Navistar, DTNA, and RVIA commented that vehicle manufacturers would have to perform expensive additional certification testing to ensure that their vehicles continued to be compliant when tested with the FAD. For example, the Alliance stated that even if a vehicle modification is not necessary, the new test hardware and procedures could

require additional certification testing, which would require significant additional cost because many vehicles have numerous body styles and seating arrangements, and testing costs include bucks, seats, seat belts, body preparation time, test set up and tear down and disposal of scrap materials. Similarly, EMA commented on the need for additional validation testing with the FAD and stated that to ensure that existing heavy-duty truck models remain compliant to FMVSS No. 210 when tested using FADs, manufacturers would have to either prove that testing with the new FAD is equivalent to testing with the current body blocks, or re-test to ensure compliance of vehicles produced after the effective date of the rule. EMA commented that, at a minimum, one test would be required to establish equivalency of the FAD and the body blocks, and that test (which destroys a cab shell) is estimated to cost between \$20,000 and \$30,000. More likely, a manufacturer would have to conduct many tests to ensure equivalency for all seat, seat belt, and seat belt anchorage configurations in all its models. For example, Navistar estimated that such an equivalency evaluation could cost \$670,000, and that the only alternative to establishing equivalency of FADs would be to re-test every product that a manufacturer plans to continue selling after the new rule is effective, which would be prohibitively expensive. Additionally, if testing disclosed a discrepancy between the FAD and the body blocks, the manufacturer would incur the costs of implementing a solution and would also need to address its potential liabilities from sold vehicles.

RVIA commented that if NHTSA finalized the FAD, the final rule should permit manufacturers to continue certifying to the anchorage strength requirements with the current body blocks until such time (regardless of how long) as new testing is made necessary by applicable changes in seating or vehicle structure, to allow motorhome manufacturers to gradually implement the new requirements and at least partially mitigate implementation costs.

Agency Response

As we explained above, the agency's indicant tests on passenger vehicle and bus seats do not indicate that using the FAD affected the compliance of the tested seat belt assembly anchorages; there were no test failures (see section V.A.4). However, considering the comments to the NPRM suggesting that manufacturers might conclude that to certify to the anchorage strength

requirements using the FAD they would have to conduct additional certification testing, NHTSA has decided to retain and modify the test procedure using the longstanding body blocks (which is discussed in detail in section V.B). Accordingly, if a manufacturer has a concern with the FAD—for example, if it believes the FAD would not be practicable for a particular vehicle, or that it would have to conduct costly testing or design to re-certify a vehicle platform—it may certify to the body block compliance option instead.

7. Incorporation by Reference

Under regulations issued by the Office of the Federal Register (1 CFR 51.5(b)), an agency, as part of a final rule that includes material incorporated by reference, must summarize in the preamble of the final rule the material it incorporates by reference and discuss the ways the material is reasonably available to interested parties or how the agency worked to make materials available to interested parties.

In this final rule, NHTSA incorporates by reference material entitled “Drawing Package for the Force Application Device 1 (FAD1), April 9, 2024” and “Drawing Package for the Force Application Device 2, April 9, 2024,” consisting of engineering drawings and specifications for the force application device that NHTSA will use to assess the compliance of seat belt assembly anchorages with FMVSS No. 210 if the manufacturer selects that compliance option. The FAD consists of an upper torso portion and a pelvic portion hinged together to form a one-piece device and is available in two sizes.

NHTSA has placed a copy of the material in the docket for this final rule. Interested persons can download a copy of the material or view the material online by accessing www.Regulations.gov, telephone 1–877–378–5457, or by contacting NHTSA's Chief Counsel's Office at the phone number and address set forth in the **FOR FURTHER INFORMATION CONTACT** section of this document. The material is also available for inspection at the Department of Transportation, Docket Operations, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, Telephone: (202) 366–9826.

B. Body Blocks

The SNPRM announced that the agency was considering maintaining the current body blocks and refining the test procedure to specify the positioning of the body blocks more clearly so that manufacturers are informed of the range of positions that may be tested to determine compliance. After the

SNPRM was published, the agency docketed the additional research it had conducted to develop and validate the zones (as well as additional testing with the FAD). The agency received comments on the proposed zone concept in response to both the SNPRM and the subsequently docketed research. In this section we address those comments and explain NHTSA's decision to retain the current body blocks while refining the test procedure to respond to the *Chrysler* decision and clarify the test procedure.⁷⁷

1. Retention of Body Blocks and Appropriateness of Specifying Zones for Body Block Placement

The SNPRM announced that the agency was considering maintaining the current body blocks and proposed a preliminary concept that consisted of specifying zones within which the body blocks would be placed for testing purposes, as it has done in FMVSS No. 222, "School bus passenger seating and crash protection."⁷⁸

Comments

The Alliance, FSC, Global, Honda, IMMI, and JCI all supported the continued use of the body blocks, and JCI, the Alliance, and IMMI specifically supported refining the test procedure to make it more objective and repeatable. For example, JCI commented that the current test procedure is unclear and potentially inconsistent. Several commenters suggested alternative approaches to specify the position of the body blocks instead of the zone approach. These suggestions are discussed in section V.B.7, *Alternative Solutions*.

However, some commenters appeared to question the appropriateness of specifying zones for the FMVSS No. 210 anchorage strength test. Global commented that the test setup is overly complex, making it difficult to obtain repeatable test results and increasing the time needed for test setup. FSC shared Global's stated concern about the complexity of the procedure and space limitations when conducting in-vehicle testing. Vans and minivans with a GVWR under 10,000 lb, have space constraints, especially when there are no rear windows and in rear-rows with

four DSPs. Alliance, Global, and IMMI stated they were concerned that zones that would be valid for a wide range of vehicles would be too large, resulting in excessive variability (this is discussed further in section V.B.4). The Alliance recommended harmonizing with ECE R14 requirements for positioning the pelvic and torso block during the initial test set-up, including against the seat back. Global and FSC similarly suggested that the body blocks be placed against the seat back. Honda did not agree with the zone concept because it would result in disharmonization. (Harmonization is further discussed in section V.C.10.)

Agency Response

The final rule will retain the body blocks along with a refined test procedure that more clearly specifies the positioning of the blocks and will adopt the FAD as an optional test device. If manufacturers are not comfortable with the FAD, they may continue to use the body blocks. As explained in more detail below, NHTSA is, consistent with the decision in *Chrysler*, amending the body block test procedure to clearly specify the placement of the body blocks at preload.

NHTSA acknowledges that the finalized test procedure does add complexity to the current test procedure, which places no restrictions on the starting location of the body blocks. However, this change is both necessary and practicable. It is necessary because in *Chrysler* the D.C. Circuit determined that the existing test procedure did not provide manufacturers with adequate notice of where NHTSA would position the body blocks. However, NHTSA's testing showed that testing using the finalized zones is practicable. For example, there are methods for assisting the positioning of the body blocks in the allowable zones (e.g., positioning aids, using lasers and a Faro Arm to ensure proper positioning, etc.)⁷⁹ that can be readily implemented by test laboratories. For vehicles with extreme space or accessibility constraints, sections of the vehicle can be removed to improve access and visibility. The zones also improve test repeatability by limiting the positioning of the body blocks. Comments regarding the size of the zones are discussed in detail in section V.B.4 and the alternatives suggested by commenters are discussed in section V.B.7.

2. Reference Point for Determining Zone Locations

The zone used in FMVSS No. 222 is defined with reference to the school bus torso belt adjusted height (TBAH)⁸⁰ and the SgRP. The SNPRM announced the possibility of using similar zones for the FMVSS No. 210 testing, but did not discuss how the proposed zone boundaries would be determined. That determination was discussed in the research report NHTSA docketed in 2018.⁸¹ Specifically, that report set out the zones specified in this final rule and explained how they were developed. The zones are specified in relation to the SgRP, which is a design point determined by the vehicle manufacturer that represents a specific landmark near the hip of a 50th percentile adult male seated in the driver's seat. The SgRP is similar to, but different from, the H-point, which is the hip point as determined by placing a two-dimensional manikin in the seat.⁸²

Comments

Honda recommended that the zones be based on the SgRP instead of the TBAH. Honda stated that while the TBAH of school bus seats is not variable (because the seat belts are contained in the seats), the TBAH in other types of passenger vehicles is variable, leading to instances in which the zone is higher than the passenger's torso.

IMMI shared Honda's stated concern about the variability of the TBAH in vehicles other than school buses, and stated that this variability would lead to large zones or setup problems. IMMI recommended that NHTSA instead use the H-point. However, IMMI identified what it viewed as potential issues with using the H-point. It stated that if not provided by a seat or vehicle manufacturer for the seat to be tested prior to the actual test, the testing

⁸⁰ The school bus torso belt adjusted height is defined in S3 of Standard No. 210 as the vertical height above the seating reference point (SgRP) of the horizontal plane containing a segment of the torso belt centerline located 25 mm to 75 mm forward of the torso belt height adjuster device, when the torso belt retractor is locked and the torso belt is pulled away from the seat back by applying a 20 N horizontal force in the forward direction through the webbing at a location 100 mm or more forward of the adjustment device as shown in Figure 5 (of FMVSS No. 210).

⁸¹ "Development of Positioning Zones for FMVSS No. 210 Body Blocks."

⁸² SAE J826 JUL95 defines and specifies a procedure, including a manikin, for determining the location of the H-point. NHTSA's regulations define the H-point as the pivot center of the torso and thigh on the three-dimensional device used in defining and measuring vehicle seating accommodation, as defined in Society of Automotive Engineers (SAE) Recommended Practice J1100: Motor Vehicle Dimensions, revised in February 2001. 49 CFR 571.3.

⁷⁷ Unless otherwise noted, the comments summarized below were in response to the 2015 SNPRM.

⁷⁸ The procedure in FMVSS No. 222 establishes a zone in which the body block must be located when testing school bus passenger seating and restraining barriers. Specifically, after the preload application is complete, the origin of the torso body block radius, at any point across the torso body block thickness, must lie within a zone defined by specified boundaries.

⁷⁹ "Development of Positioning Zones for FMVSS No. 210 Body Blocks," pgs. 39–46.

agency will become responsible for determining the location of the H-point. It also stated that the SAE J826 machine does not always position well in the seat due to the bolsters and cushion contours, leading to variations in H-point determinations. To accommodate this variation, according to IMMI, there may be a need for an increase to the alignment zone, which could lead to variation in FMVSS No. 210 performance test results. The Alliance recommended using either the SgRP or H-point instead of the TBAH, because using the TBAH would introduce too much variability in body block positioning, which could lead to infeasible zones.

FSC developed a positioning procedure that defined the positioning of the body blocks relative to one another, and submitted data relating to this procedure. However, FSC reported that this procedure did not work well since the reference plane was attached to the pelvic body block and therefore moved when a preload was applied. FSC stated that it was providing the data for informational purposes and was not suggesting it be adopted.

Agency Response

NHTSA agrees with the commenters' concerns about using the TBAH. The final zones do not use the TBAH and instead are specified with reference to the SgRP. We decided to use the SgRP and not the H-point because the seat positioning provided for a more adequate torso location.

NHTSA appreciates FSC's comment and agrees that its concept would be difficult to implement, given that the body blocks are independent of each other, and their positioning depends on a variety of other factors, such as the design and weight of the body blocks (see section V.B.3). We believe the body block zone concept adequately addresses these factors because they were considered during the development of the zones.

3. Applicability of Zones to a Range of Vehicle and Seat Designs and Factors Affecting Position of Body Blocks at Preload

In the SNPRM, NHTSA stated that it had initiated research to aid in the development of the zones bounding the initial placement for the current body blocks. NHTSA explained that the research would evaluate the zone concept across different vehicle types (including heavy vehicles) and seat configurations and develop zone boundaries that would be feasible and practicable for all or most vehicles.

Comments

NHTSA received a variety of comments to the SNPRM regarding factors that affect the preload positioning of the body blocks.

IMMI, JCI, EMA, the Alliance, and Global commented that body block position would depend on seat and seat belt designs. IMMI further commented that the body blocks would not necessarily fit well in all seats due to variations in seat cushion contours, seat back size and bolster shape. EMA similarly commented that changes to the FMVSS No. 210 certification test procedures designed to work for passenger cars may not work for heavy trucks. It noted that while FMVSS No. 222 applies only to rigid school bus bench seats (which are different than seats used in heavy trucks (*e.g.*, air suspension seats)), FMVSS No. 210 specifies seat belt anchorage requirements for a broad range of motor vehicles, including medium and heavy-duty trucks. It stated that without testing of a broad range of heavy-duty trucks, NHTSA cannot know for certain whether it is feasible to establish appropriate body blocks zones for heavy-duty trucks. EMA further stated (in its comments on the 2018 notice of availability) that the additional technical reports NHTSA docketed did not alleviate its concerns because they do not contain any data with respect to the feasibility of the body blocks on the medium- and heavy-duty trucks built by its member companies, and suggested that the reports do not properly address the unique aspects of the broad range of medium and heavy-duty vehicles (*e.g.*, tractors, refuse trucks, parcel delivery vans, etc.). Accordingly, EMA argued that NHTSA should exempt vehicles with a GVWR greater than 10,000 pounds from the new requirements. IMMI commented that the body block position at the start of the test (*i.e.*, when the test load is applied) is affected by how tight the seat belt is pre-tensioned during setup, which affects the movement of the blocks during the preload or initial loading phase of the pull tests.

IMMI also stated that achieving consistent positioning of the torso block is made challenging by the mass of the torso body block and the mass of the load chain, so that unless supported prior to application of sufficient pull load, the block will drop from initial set-up position. IMMI stated that additional setup is required to hold the torso blocks in place prior to actual testing; IMMI uses a temporary hoist chain to support the torso block until sufficient preload is achieved to

securely position the block for full test loads. IMMI commented that this method is not always acceptable when dealing with enclosed seating or multiple position tests and additional alternative means for vertical support must be devised. Ultimately, tests results may possibly be impacted depending on support type. IMMI accordingly suggested revising the design of the torso block to simplify and reduce mass.

FSC conducted an analysis on the movement of the body blocks up to and during preload with different seat belt and seat types and provided its findings.⁸³

Agency Response

After reviewing the comments on the SNPRM, NHTSA carried out research to develop zones for the body blocks that would be appropriate for the anchorage strength test. To ensure that the zones would apply to a wide variety of types of vehicles and seats, the agency's research considered the factors identified by the SNPRM commenters, as well as other factors that could affect body block position at preload. These factors included vehicle-specific parameters (such as the seat design and the overall seat belt system geometry) and test-specific parameters (such as the force application angle). The zones in the final rule are based on data from body blocks positioned in a variety of vehicles, seats, and seat-belt configurations. The zones are based on data from a range of different passenger vehicles, and were mathematically expanded to accommodate an even wider range of vehicles. The zones were validated on three heavy vehicles—specifically, two school bus seats (an IMMI school bus seat and a C.E. White school bus seat) and one motorcoach (an Amaya motorcoach) seat. Although the agency did not test the zones in every single possible type of medium- and heavy-duty vehicle, we believe NHTSA's testing shows that the zones are valid for a wide range of vehicles, including medium- and heavy-duty vehicles. Given the extensive use of the body blocks over the years, we believe IMMI's concerns about the body blocks not being an adequate test device for testing a wide variety of seat designs has not been borne out in practice. Because the agency's research included a variety

⁸³ It measured the displacement with (1) no connections to the hydraulic cylinders (rest), (2) with chains connected to hydraulic cylinders, and finally (3) at the FMVSS No. 210 recommended preload[s] of 136 kg and 227 kg (300 lb and 500 lb) for Type I & Type II seats respectively. See Attachment 2 of FSC's comment for details (NHTSA-2012-0036-0027).

of seat and seat belt designs, the zones in the final rule are large enough to account for this variety.

With respect to IMMI's comment regarding seat belt tension and routing, NHTSA's fleet study did find that the amount of seat belt webbing pulled out from the retractor had an effect on body block placement in the fore/aft direction (x-plane). The study attempted to address the pre-tension of the seat belt by marking the belt at the D-ring at the desired length and locking it at this position for the remaining positioning attempts on that seat. Testing laboratories can put these actions into practice to facilitate positioning of the body blocks in a vehicle; testing laboratories can adjust the seat belt to the length necessary so that the body block is within the zone at preload. Similarly, if testing is performed with replacement webbing or cable, the length of the replacement material can be chosen to determine a fore/aft position in the required zone. In addition, the routing of the belt on the torso block can be used for small adjustment to increase the distance between the torso and pelvic block to avoid interference. This technique was not required in NHTSA's fleet study because contact (interference) between the blocks was not observed before or during application of the preload.⁸⁴

NHTSA has decided not to specify the weight or revise (simplify) the torso or pelvic body block designs. NHTSA's fleet study examined the effect of the mass of the torso body block and found that the positioning of the torso block was not sensitive to torso block mass. The weight of IMMI's torso body block seems to be greater than the blocks tested by NHTSA, so IMMI's torso block design and construction may be unnecessarily heavy. Both the torso and pelvic body blocks have been in use for decades and similar designs are used internationally. The agency has conducted numerous FMVSS No. 210 compliance tests through multiple test laboratories. Laboratory technicians use various techniques to facilitate the set-up of the torso body block, such as positioning devices. The agency's study identified several such techniques,⁸⁵ and the fleet study that was used to develop the zones used one of these

techniques—a positioning aid placed on top of the pelvic body block—as well as having a laboratory technician position it by hand. Based on our testing, we believe that the final zones will accommodate different placement techniques.

One parameter NHTSA did not evaluate in the fleet study is the effect of the hardware used to connect the body blocks to the force actuators (*e.g.*, chains). While FSC's analysis does suggest that the seat type and connection to the force actuators have some effect on the position of the body blocks at preload, NHTSA's testing showed that the connection method does not have a meaningful effect on the position of the body blocks and the finalized zones will accommodate the effects of this test parameter.

4. Size of Zones, Variability of Test Results, and Effect on Compliance

The SNPRM explained that NHTSA was considering specifying zones like those specified in FMVSS No. 222, but did not otherwise discuss the size of the zones, or the variability of test results and whether currently produced vehicles certified before the establishment of the zones would continue to comply with the standard. The reports docketed with the notice of availability in 2018 did provide this information (see section IV.B).

Comments

The Alliance, Global, and IMMI stated they were concerned that zones that would be valid for a wide range of vehicles would be too large, resulting in excessive variability. The Alliance stated that the FMVSS No. 222 zone would be too large, resulting in significant variability in belt force vectors and system performance with the torso blocks placed at the extreme ends of the zone. The Alliance also stated that the zones would permit interactions between the torso and pelvic blocks that could result in load transfer between the blocks, which could result in non-representative loading onto the seat belt assembly anchorages, and such variability would require manufacturers to run additional compliance testing, and could also drive additional cost and weight into vehicles. Global and IMMI similarly argued that factors such as the give of the seat belt system, deflection of the seat cushion, variation in seat cushion contour, seat back size, torso belt anchor location, and bolster shape would affect the position of the body blocks and make consistent positioning a challenge; these factors may necessitate a large zone, which could lead to variation in test

results. Global also commented that the FMVSS No. 222 test procedure is not suitable for use in FMVSS No. 210 because the test setup is overly complex, and it is difficult to ensure consistent test repeatability when positioning the body blocks.

EMA stated that even if it were possible to establish appropriate body block zones that would accommodate all seat and seat belt assembly configurations in all heavy-duty vehicles, it would be prohibitively expensive to re-certify all existing vehicles to comply with the new requirements.

Agency Response

As an initial matter, we note that even if there is variability in test results in the sense that a vehicle model may pass the anchorage strength test with the body blocks at one location in the zone, but fail the test when the body block is placed at another location in the zone, this variability is attributable to the vehicle's performance, not the test. The final zones give manufacturers clear notice of where NHTSA may position the body blocks for testing. Manufacturers are responsible for ensuring compliance at all points in the zones.

In any case, while we believe the final rule's zones are large enough to account for a variety of vehicles and seat types, they are still relatively modest in size, particularly from the side-profile. (See section IV.B for the zone dimensions.) The zone for the torso body block target point measures 530 mm in length by 240 mm in width by 245 mm in height (20.9 in. by 9.4 in. by 9.6 in.) and the zone for the pelvic body block target point measures 340 mm in length by 205 mm in width by 145 mm in height (13.4 in. by 8.1 in. by 5.7 in.). We also have seen no data or evidence to suggest that there will be large variability in force vectors or test results. To address the Alliance's concern about testing at the zone extremes, we ran an indicant test on a minivan with the body blocks at the longitudinal extremes of the zones recorded in the field study. There was no effect on the seat belt anchors meeting the load requirements of FMVSS No. 210. In addition, as noted earlier, NHTSA performed several indicant tests with preliminary versions of the zones on a variety of light vehicles, and did not record any test failures. Moreover, in the agency's forty-plus year history of testing for compliance with the anchorage strength requirements, test failures have been uncommon. According to the agency's records, for testing from 1972 to the present, there were 327 compliance tests

⁸⁴ Removal of slack is not the same concept with the FAD as it is for the body blocks. A FAD sits on the seat and so slack can be easily removed whereas the body blocks potentially must be adjusted to be positioned in the zones and in some cases are held in place by the belt, particularly for the torso block. If there was slack in the belt the body block would not be held in place.

⁸⁵ "Development of Positioning Zones for FMVSS No. 210 Body Blocks," pgs. 13–16 (NHTSA–2012–0036–0041).

for FMVSS No. 210 and only 23 test failures.⁸⁶ (For a response to the Alliance's comment regarding interactions between the body blocks see section V.B.7.)

For the same reasons, we also have not seen any data or evidence to suggest that testing to the final zones will result in different test outcomes compared to the existing test procedure. The current test procedure has no constraints on the positioning of the body blocks. The refined test procedure in this final rule establishes allowable zones for the positioning of the body blocks. It therefore reduces the set of permissible test conditions. Because the universe of test conditions is smaller, the variability of possible test outcomes is also smaller. Thus, we do not foresee issues with compliance.⁸⁷

5. Laboratory Safety Concerns

FMVSS No. 210, S4.2.4 requires simultaneous testing of certain types of designated seating positions (those that are common to the same occupant seat and that face in the same direction or laterally adjacent designated seating positions that are not common to the same occupant seat, but that face in the same direction if their anchorages are within a certain distance from each other). Testing of adjacent designated seating positions with the body blocks can lead to an intricate test set-up with multiple body blocks and chains in a relatively confined space, and with a load being applied to the chains. With the refined test procedure, verifying the positioning of the body blocks in the allowable zones and maintaining the position for each designated seating position until all adjacent designated seating positions are ready for testing will inherently require some additional effort and diligence.

Comments

Honda and Global stated they were concerned that positioning the body

blocks while a preload force is being applied could be dangerous for the laboratory technicians, especially for the middle seating position in a three-seat row.

Agency Response

Testing inboard seats is not a new requirement. The new requirements only require the additional process of ensuring the body blocks are in the zones, and we believe the zones are sized in a manner that would limit the need for repositioning of the body blocks. As discussed in the docketed test report,⁸⁸ the involvement of technicians can be minimized by using different test set-up methods. For example, positioning aids can be used to minimize the involvement of the technicians when applying the preload to the body blocks, and the use of lasers and/or a Faro Arm to ensure proper positioning of the body blocks in the zones would help minimize the exposure to the body blocks at preload. Therefore, we do not believe that the refined test procedure would necessarily result in an increased safety risk for technicians. The implementation of the zones will mainly require additional test set up effort, not installation effort.

6. Lack of Regulatory Test Procedure Language and Requested Public Workshop

The notice of availability did not set out specific test procedures for positioning the body blocks in the zones, although the docketed test report did provide the zone specifications, as well as discussion and data related to positioning the body blocks in a variety of vehicles using a variety of different positioning methods.

Comments

The Alliance and EMA, in their comments on the notice of availability, recommended that NHTSA issue a pre-final rule draft test procedure and that NHTSA should provide them with the opportunity to comment on this. EMA also stated that if it is not provided an opportunity to comment, NHTSA should exempt Class 3 through 8 commercial vehicles from the new requirements, and suggested that the proposed regulatory language should have specific testing requirements applicable to the driver's seats of medium- and heavy-duty trucks.

The Alliance also recommended that NHTSA schedule a public compliance workshop to inform the public about

how the procedures would be applied as well as provide an opportunity to identify any remaining issues. The Alliance also stated that it was still evaluating the research and intended to provide detailed comments, and requested that the agency not issue a final rule until at least 90 days after publication of the notice of availability.

Agency Response

NHTSA has decided to issue the final rule without providing additional opportunity to comment on the exact language contained in the finalized test procedures. NHTSA believes that doing so is not necessary in this instance. While NHTSA typically provides proposed regulatory text, it is not required under the Administrative Procedure Act. However, although NHTSA did not provide exact regulatory language regarding this issue, the research report NHTSA docketed and upon which the Alliance and EMA commented contained the exact zone specifications that are in the final rule.⁸⁹ The research report also contained extensive information about the test procedures, both the procedures contained in the final regulatory text, as well as more informal laboratory procedures that may be part of the laboratory test procedures manual or laboratory practice. Also, body blocks have been used for anchorage strength testing since the inception of FMVSS No. 210 in 1967. The final rule does not alter the characteristics or specifications of the body blocks. It also does not alter the longstanding test procedures, other than limiting the locations in which NHTSA may place the body blocks at preload. For these same reasons, NHTSA has also decided not to hold a public workshop before issuing the final rule.

7. Alternative Solutions Suggested by NPRM Commenters

The SNPRM invited comments on the proposed zone concept as well as other possible solutions. The SNPRM requested comments on how the zones should be established in the vehicle environment, how to verify that the body blocks are within the specified zones under preload, and any make/model-specific issues that could impact the implementation of the proposed body block zone concept. It requested that commenters' recommendations be consistent with the existing standard requirements and test procedure (e.g., force requirements, hold time, etc.).

⁸⁶ This tally includes failures related to any of the FMVSS No. 210 requirements as well as what the agency would typically consider "non-tests" (i.e., tests that could not be completed due to equipment or testing issues), so the number of actual test failures for the anchorage strength requirements is likely lower than this. The agency was unable to locate all the past test reports to determine the number of failures more accurately. The agency believes, however, that the overall magnitude of the number of test failures reflected in the available records accurately reflects the magnitude of actual test failures.

⁸⁷ Moreover, if a vehicle fails the test with the body blocks positioned in the final rule zones, whereas it passes the test with the blocks positioned outside the zones, failure would be the proper outcome. These results would indicate that the vehicle can only pass the test with an unusual placement of the blocks that is unlikely to be equivalent to a real occupant's seating position.

⁸⁸ "Development of Positioning Zones for FMVSS No. 210 Body Blocks" (NHTSA-2012-0036-0041).

⁸⁹ "Development of Positioning Zones for FMVSS No. 210 Body Blocks" (NHTSA-2012-0036-0041).

i. ECE R14 6.3.4 and Similar Procedures
Comments

The Alliance identified several related modifications based on S6.3.4 of Economic Commission for Europe (ECE) Regulation No. 14 (R14), “Safety belt anchorages”, that it recommended NHTSA adopt to address the Alliance’s concerns about test variability and load transfer between the torso and pelvic body blocks. JCI also encouraged the agency to consider an alternative body block positioning procedure that would eliminate body block interference during testing, and provide specific guidance on how to position the blocks in relation to each other and to the seat.

- *Place body blocks against the seatback with belt pulled tight.* The Alliance noted that R14 requires that the pelvic block be “pushed back into the seat back while the belt strap is pulled tight around it,” and the torso block must be “placed in position, [while] the belt strap is fitted over the device and pulled tight.”⁹⁰ FSC and Global had similar comments. FSC suggested the body blocks be set up on the seats and the occupant restraints cinched down so that the body blocks are in contact with the seating surface (seat back and seat cushion) prior to test preload. This setup would be similar to FMVSS No. 225 S11(a), which calls for a rearward force to be applied to the test device to press the device against the seat back and remove any slack or tension in the seat belt. Global stated that placing the body blocks against the seat back is representative of real-world use conditions, and several test laboratories have evaluated testing with the positioning of the body blocks near the seat back and identified no issues.

- *Position torso block rearward of pelvic block.* The Alliance recommended that NHTSA modify the current test procedure for positioning the body blocks such that under application of a preload that is 10% of the target load, the lowest point on the torso block must be positioned rearward of the forwardmost plane on the horizontal surface of the lap belt block.

- *Specify that interference be avoided.* The Alliance also recommended adopting the R14 requirement that the positioning of the body blocks “shall avoid any mutual influences during the pull test which adversely affects the load and load distribution.”⁹¹

- *Specify torso body block pivot point.* The Alliance also noted that the

torso pivot point is not specified in the regulation or the laboratory test procedure and, as a result, various torso blocks exist, unnecessarily introducing test setup variability. It recommended that NHTSA revise the standard so that the pivot point is as specified in ECE R14, which specifies the exact location of the pivot point on the torso body block.

Agency Response

We agree that the test procedure should specify that there be no contact between the pelvic and torso body blocks at the end of preload. The SNPRM did not discuss how the refined body block test procedure would address potential interaction between the body blocks. Currently neither the standard nor the compliance test procedure address body block interaction prior to or during testing. Although we would not expect contact to result in undesirable load transfer between the two blocks, contact between the pelvic and torso body blocks could affect how the loads are distributed onto the seat belt if one block became hooked on the other. However, the agency is not aware of this having been a problem during its own compliance testing nor is it aware of any manufacturer concerns about body block interaction during the long history of compliance testing for FMVSS No. 210. Nonetheless, the best practice would be to avoid any contact. The final regulatory text specifies that the body blocks must not be in contact at the end of the preload force application (*i.e.*, before the test force is applied). Our research has identified different methods to prevent preload contact between the body blocks, which includes adjusting the alignment of the seat belt on the torso block or using a positioning aid to achieve clearance between the body blocks.⁹² After preload (that is, once the test loads (*i.e.*, loads greater than 1,335 N) begin to be applied and held for the required 10 seconds) the test procedure does not prohibit the body blocks from touching. We recognize that it might not be safe for laboratory technicians to adjust the position of the body blocks when the much greater test load is applied.

NHTSA has decided not to adopt the suggested method of pushing the body blocks against the seat and cinching the seat belt tightly, because doing so could potentially impact the seat structure and anchorage performance.⁹³ This method

could especially be a problem for seats with integrated seat belts because there may be a tendency for increased seat deformation if cinching the blocks against an integrated seat. We also believe this deviation from R14 is necessary to ensure objectivity and ensure that the standard is enforceable in the U.S. The U.S. self-certification and compliance testing process in the FMVSSs requires a high level of objectivity. In the decision in *Chrysler*, the Court of Appeals found that too much ambiguity exists in the current FMVSS No. 210 test procedure. Consequently, the agency is working toward a more enforceable standard. The instruction to “pull” the belt “tight” is vague, especially if the belts are switched out for straps. In addition, the initial positioning in R14 seems to be without any load placed on the body block, so there is no control on the position of the blocks once the loading starts. The position of the blocks might be much different depending on whether the vehicle belts or straps are used. By contrast, the test procedure in this final rule mandates the position of the blocks when the preload is applied, regardless of whether the vehicle belts or straps are used.

With respect to the Alliance’s suggestion for ensuring that the lowest point of the torso block be rearward of the forwardmost point of the pelvic body block, this suggestion would also seem to require that the torso body block be pushed against the seat which we have decided against. Furthermore, the Alliance was commenting on the zone concept, similar to that used in FMVSS No. 222, which was initially used in developing body block zones, that uses the torso belt adjusted height. However, the final zones for positioning the body blocks are now based on the SgRP. Using the final zones, the lowest point on the torso body block may be located forward of the forwardmost plane on the top surface of the lap belt block that the Alliance is referring to, as shown in the docketed test reports. The fleet testing done in the development of the final body block zones showed that the body blocks can be positioned properly without interference with each other in the zones developed with the SgRP as the reference point.

We are declining to specify the torso body block pivot point as in ECE R14. The current regulatory text only specifies (Figure 3 in FMVSS No. 210) the torso body block dimensions and the material used to cover the body blocks; it does not further specify the body block, such as weight, material, or the specific design (to which weight is correlated). Accordingly, the designs of

⁹⁰ UN Regulation No. 14 Revision 7—7 August 2023, Section 6.3.4.

⁹¹ S6.3.4.

⁹² “Development of Positioning Zones for FMVSS No. 210 Body Blocks,” pgs. 13–16.

⁹³ The test procedure for the FAD does specify resting the FAD against the seat back, but does not specify cinching the FAD against the seat back.

the torso body blocks that are in use in testing labs may and do differ. NHTSA's research found that test labs use torso body blocks that differ in weight and pivot point location.⁹⁴ Our research identified a range of torso body block weights, ranging from 7.7 kg (17 lb) to 13.7 kg (30.3 lb). Our research also identified two different types of torso body blocks designs in use that have different pivot point locations. One type has a yoke-style pull arm attached at the center rear of the body block; the pivot point is near the end of the body block nearest the seat. The second type is a front-pull style body block; the pivot point is at end of the body block furthest from the seat.⁹⁵ Not specifying the pivot point location gives test labs the flexibility to continue testing with different styles of pull arm, as is currently the practice. Our testing examined the effect of the torso body block pull style on the body block position; it showed that the two different body block styles positioned differently at preload (an average difference in position of about 15 mm), and that the positioning was more repeatable for the front pull style. We included both types of body blocks in the fleet study, and this positioning data is included in the data set on which the finalized zone are based. The final zones therefore take the variation in the pivot point location into account. We also believe that it would be possible to position a torso body block with a pivot point in the location specified in ECE R14 within the zone specified in the final rule.

ii. Canadian Test Method 210

Comments

Global recommended that the agency should consider providing manufacturers the option to utilize the placement procedure specified in Canada Test Method 210, "Seat belt anchorages." That standard is largely the same as the current FMVSS No. 210 (e.g., same body blocks and test requirements including the loads applied to the seat belts and hold time), but it also specifies an alternative approach that describes how to position the body block to prevent interference

with the seat belt buckle.⁹⁶ That procedure involves using a 50th percentile male test dummy to determine the maximum amount of webbing payout to use in positioning the body blocks to minimize the likelihood of buckle damage. The dummy is placed in the seat and belted with the slack removed. The belt is marked to indicate how far the belt extends from the retractor. The body blocks are then placed. If the belt buckle appears to be susceptible to damage from the test loads, the blocks can be moved forward, but not farther than where the belt was marked following the ATD placement.

Agency Response

NHTSA acknowledges Global's concern about seat belt buckle interference,⁹⁷ but NHTSA believes that the suggested procedures are not necessary. The finalized zones allow for positioning of the blocks to avoid seat belt buckle interference. As discussed in the agency's research study, the use of positioning devices, spacers, and manual manipulation were taken into consideration during the development of the body block zones. In addition, the standard does not require the use of the seat belts for testing, so if seat belt buckle interference cannot be avoided in a particular vehicle, the seat belt assembly can be replaced with a material of equal or greater strength (e.g., steel cable) to transfer the loads to the seat belt assembly anchorages.

iii. Facilitating Consistent Positioning Comments

To facilitate consistent positioning of the body blocks, IMMI suggested creating a standardized positioning device and revising the design of the existing torso block to simplify and reduce mass. (IMMI also recommended increasing the preload to position the torso block. This possibility is discussed in section V.B.7.)

Agency Response

The agency's research study evaluated IMMI's suggestions. As noted earlier, the current laboratory test procedure for FMVSS No. 210 has long instructed NHTSA's contractor test laboratories to apply a preload equal to 10% of the test force to the body blocks so that photographs and measurements of the load application angles can be taken. Next, the load is increased to the full test force. FMVSS No. 210 seat belt assembly anchorage testing specifies test

forces of 22,241 N (5,000 lb) for the pelvic body blocks loading a Type 1 belt and 13,345 N (3,000 lb) each for torso and pelvic body blocks loading Type 2 belts. NHTSA's research study evaluated the effects on body block position under preloads of 1,335 N and 2,224 N. The study found that the magnitude of the preload force did not have a significant effect on the body block position but noted that a 2,224 N preload force could begin to deform the seat prior to the required test force being applied. Accordingly, NHTSA has decided not to increase the preload force and the final regulatory text specifies the use of a preload force of 1,335 N for both pelvic and torso body blocks for testing Type 1 and Type 2 belts.

The research study also took into consideration the use of a positioning device when developing the zones. NHTSA's research showed that very simple fixtures could be used to aid in the initial body block position, but that required preload positions could be easily achieved without the use of such aids. Accordingly, NHTSA has decided not to require the use of such a device and instead give test laboratories the flexibility to use whatever method they would prefer to reach the preload positions, as the preferred method may vary depending on the vehicle environment and the test laboratory's preferences. NHTSA also decided not to revise the design of the body blocks.

iv. FEA Modeling for Positioning the Body Blocks

JCI's SNPRM comment noted that it establishes the appropriate positioning of the body blocks through finite element analysis (FEA) modeling for its evaluation testing, but it recognizes that NHTSA's testing contractors would be unable to replicate that process.⁹⁸

We concur with JCI that it would not be a viable solution to require our testing laboratories to use FEA modeling to replicate the positioning used by the vehicle manufacturer for the FMVSS No. 210 compliance tests, because the agency would not want to be limited to a manufacturer-specific position for the body blocks. In addition, FEA modeling would require an information collection to obtain detailed seat information about each designated seating position for the various trim packages of every vehicle, which would result in added cost and time burden to the agency and vehicle manufacturers.

⁹⁴ "Pivot point" refers to where the test load is applied (i.e., the point on the body block to which the actuator chain is connected). The standard does not specify the location of the pivot point. The laboratory test procedure depicts a point but does not define it. In addition, given the minimal design specifications in FMVSS No. 210, there could be additional body block designs in use, as evidenced by IMMI's comment.

⁹⁵ "Development of Positioning Zones for FMVSS No. 210 Body Blocks," pgs. 9–11.

⁹⁶ Transport Canada. 2010. Test Method 210, Seat Belt Anchorages, S2.3.

⁹⁷ See NPRM at pg. 19158.

⁹⁸ NHTSA–2012–0036–0026.

C. Issues Common to the FAD and Body Blocks

1. Shoulder Belt Height Adjustment

Neither the current regulatory text nor the regulatory text proposed for the FAD specify the shoulder belt anchorage height adjustment (also referred to as the D-ring).⁹⁹ The laboratory test procedure for FMVSS No. 210 does specify that the “center position” for the shoulder height adjustment be used for the compliance test, and that if there is no center position, the contracting officer’s technical representative will make the final decision as to which position will be tested. In NHTSA’s fleet study testing to develop the body block zones, the D-ring was set to mid-height.¹⁰⁰

Comments

The Alliance, commenting on the NPRM, questioned at what position the anchorage height adjustment (referred to by the Alliance as the “adjustable turning loop”) should be set (highest, mid, or lowest position).

Agency Response

We have clarified the regulatory text to specify that the shoulder belt anchorage height adjustment (D-ring) may be set to any height. We note that the revised laboratory test procedure continues to specify the center position for the shoulder height adjustment. However, we also note (as also noted in the laboratory test procedure¹⁰¹) that the laboratory test procedure is intended only to provide guidance to NHTSA’s compliance testing contractor, but that with respect to manufacturer

certification, the test procedure in the regulatory text controls.

2. Preload Force Magnitude and Duration

FMVSS No. 210 specifies that the test force (22,241 N for Type 1 seat belts and 13,345 N on the lap portion and on shoulder portion for Type 2 seat belts) be attained in not more than 30 seconds and maintained for 10 seconds. FMVSS No. 210 does not currently specify a preload force. However, the laboratory test procedure has long provided that a preload of 10% of the required target load should be applied to the body block(s) at the onset of the test (*i.e.*, 2,224 N for a pelvic body block loading a Type 1 seat belt and 1,335 N each for the torso and pelvic body blocks loading Type 2 seat belts); while at this load level, photographs and measurements of the load application angle are taken. NHTSA’s fleet study examined the effect on body block position of each of these preloads, and concluded that they did not have a meaningful effect on the body block position.¹⁰² The SNPRM proposed specifying zones for the placement of the body blocks when a preload force is applied to the blocks. FMVSS No. 222, to which the SNPRM referred, specifies a preload force of 600 ± 50 N be applied to the torso body block positioned under each torso belt.¹⁰³ This preload force is, depending on the weight of the vehicle being tested (because the test forces specified in FMVSS No. 222 depend on vehicle weight), approximately 8 percent to 18 percent of the full test load. Neither the FMVSS No. 210 laboratory test procedure nor FMVSS No. 222 specify a duration for the preload force application.

The NPRM did not explicitly address or provide for any preload force in connection with the FAD testing procedure; it simply specified a procedure for replacing FAD1(s) if there was contact “after the FAD1 devices are installed but prior to conducting the test.”¹⁰⁴

Comments

In comments to the SNPRM, Honda requested clarification of when the 30-second test force ramp-up starts in relation to the preload force. IMMI stated that the mass of the torso body block and load chain make it challenging to consistently position the torso body block and suggested that increasing the preload force could

facilitate consistent positioning of the torso body block.

Agency Response

The final rule specifies a preload force for the body blocks, but not the FAD. The test procedures in the regulatory text for the body blocks specify that the body blocks be positioned in the applicable zones with a preload of 1,335 N being applied to each. Because a lower preload is preferable from a laboratory safety standpoint and our testing found that it did not have a meaningful effect on positioning the body blocks, we decided not to specify the higher preload force, so the final rule specifies a preload for each body block of 1,335 N for both Type 1 and Type 2 seat belts.

Although the final rule does not specify a preload for testing with the FAD, the longstanding laboratory test procedure for the body blocks—prior to use of the zones for positioning—has specified that a preload (equal to 10% of the target test load) be applied to allow verification of the required pull angle, apply tension to the pull chains, and take pre-test photographs. The updated laboratory test procedure will similarly specify a preload for the FAD equal to 1,335 N each at the pelvis and torso attachments for Type 2 belts and at the bridged pull yoke for Type 1 belts, to match the preload specified for the body blocks.

When testing with the body blocks, we are specifying that there be no contact between the body blocks while the preload force is being applied. When testing with the FAD, we assess whether there is any contact between adjacent FAD1s before any preload is applied; if there is contact, a FAD1 is replaced with a FAD2 according to the FAD positioning procedure in the regulation text (S5.5).

In response to Honda’s comment, we clarify that the time during which the preload force is being applied is not part of the 30-second test force ramp-up, for either the body blocks or the FAD. For example, when testing with the body blocks, the 30-second ramp-up period commences once the body blocks have been positioned and the test force begins to be applied; therefore, positioning adjustments can be made before or during preload without interfering with the time requirements specified in the existing regulation. The final rule does not specify how long the preload force may or must be applied before the test force is applied. This is again consistent with the longstanding laboratory test procedure for the body blocks. The duration of the preload force will vary depending on the test

⁹⁹ Some vehicles are equipped with seat belt anchorages and torso belt height adjusters that allow the shoulder belt’s upper anchorage to be adjusted. The shoulder belt anchorage height adjustment is sometimes referred to as the D-ring and for outboard designated seating positions is typically attached to a pillar of the vehicle (*e.g.*, B-pillar for front outboard seating positions).

¹⁰⁰ “Development of Positioning Zones for FMVSS No. 210 Body Blocks,” pg. 29.

¹⁰¹ The laboratory test procedure for FMVSS 210 Seat Belt Assembly Anchorages states in Section 1 “Purpose and Application,” that “[t]he OVSC Laboratory Test Procedures, prepared for use by independent laboratories under contract to conduct compliance tests for the OVSC, are not intended to limit the requirements of the applicable FMVSS(s). In some cases, the OVSC Laboratory Test Procedures do not include all the various FMVSS minimum performance requirements. Sometimes, recognizing applicable test tolerances, the Test Procedures specify test conditions, which are less severe than the minimum requirements of the standards themselves. Therefore, compliance of a vehicle or item of motor vehicle equipment is not necessarily guaranteed if the manufacturer limits certification tests to those described in the OVSC Laboratory Test Procedures.”

¹⁰² “Development of Positioning Zones for FMVSS No. 210 Body Blocks,” pg. 39.

¹⁰³ S5.1.6.5.4.

¹⁰⁴ Proposed S5.3(a).

laboratory equipment and personnel, the type and number of seats being tested, and the type of test device used. We believe that variation in the duration of the preload force application will not affect test results because it is of such low magnitude; during NHTSA's long history of testing the anchorage strength requirements there has been no indication that preload affects test outcomes. Similarly, because the additional step of positioning the body blocks in the zones will occur during preload for the body blocks but not for the FAD, it is possible that the preload duration will be longer for the body blocks than for the FAD. For the same reasons, we believe this slight difference between the two test procedures will not affect test outcomes.

3. Seat Adjustment

The longstanding regulatory text in FMVSS No. 210 states that before applying the test load the seat is placed "in its rearmost position."¹⁰⁵ The regulatory text proposed for the FAD positioning procedure specified that the seat (if adjustable) be placed in its rearmost position and, if separately adjustable in the vertical direction, at its lowest position.¹⁰⁶ It also specified that the seat back (if adjustable) be placed at the manufacturer's design seat back angle, as measured by SAE J826 (July 1995).¹⁰⁷ SAE J826 JUL95 defines and specifies a procedure, including a manikin, to determine the H-point. The H-point is defined in relation to the hip location of a driver in the driver seating position. The H-point is used in several other NHTSA standards and represents a specific landmark near the hip of a 50th percentile adult male positioned in a vehicle's driver seat.

Now that the agency is reinstating the option to test with the body blocks using the refined test procedure (with the zone), we are modifying the proposed seat adjustment provisions by using the SgRP instead of the H-point. This modification is because the seat adjustment procedures specified in the final rule apply to both the FAD and the body blocks. Because the body block zone placement procedure uses the SgRP—not the H-point—we are modifying the seat adjustment procedure so that it uses the SgRP.

Specifically, we are adding regulatory text to clarify that the seat is to be adjusted to the rearmost normal riding or driving position. The rearmost normal riding or driving position is specified by the manufacturer and

includes all modes of seat adjustment, including horizontal, vertical, seat back angle, and seat cushion angle. We note that in the NPRM, the seat was proposed to be placed in its rearmost and lowest position when using the FAD, but no details were provided as to how such a position would be achieved. By specifying a seat position consistent with the SgRP, the agency is fully articulating a well-defined seat position with which all manufacturers are familiar. This information is typically already requested prior to testing by OVSC.

4. Seat Belt Pretension and Routing

With respect to the FAD, the seating procedure proposed in the NPRM specified that, once the FAD is positioned on the seat, the tester must "[b]uckle and position the seat belt so that the lap belt secures the pelvis portion of the FAD1 or FAD2 and the shoulder strap secures the torso portion of the FAD1 or FAD2." It then specified that the technician removes enough slack from the seat belt such that a 31.75 mm (1.25 inch) diameter wooden rod cannot pass between the FAD and the belt with a maximum force of 2.22 N (0.5 lb-force) exerted tangent to the FAD shoulder or lap belt interface. The proposed regulatory text did not specify with any more specificity how the belt should be routed over the FAD.

With respect to the current body blocks, neither the current regulatory text nor the laboratory test procedure addresses seat belt tension or routing. NHTSA's research to develop zones for the body blocks did examine the effect of seat belt tension and belt routing. It found that the amount of seat belt webbing pulled out from the retractor had an effect on body block placement in the fore/aft direction (x plane); to address this circumstance, in the testing conducted in the study, the belt was marked at the D-ring at the desired length and locked at this position for the remaining positioning attempts on that seat. The study also examined the effect of seat belt routing on the torso block. The shoulder belt was initially placed at the center of the torso block belt path and the routing was not further controlled while the preload was applied. The study found that the routing of the shoulder belt on the torso block can affect its position.

Comments

In comments to the NPRM, Honda and JCI discussed belt tension/positioning with respect to the FAD. Honda asked NHTSA to clarify the proposed procedure with respect to measuring the load on and the

displacement direction of the wooden rod. JCI commented that NHTSA's indicant testing of integrated seats¹⁰⁸ showed that the seats posed difficulties for positioning the belts correctly,¹⁰⁹ and commented that NHTSA should address this issue. With respect to the body blocks, IMMI commented that seat belt tension might vary between tests, resulting in variation in the position and/or movement of the body blocks at preload.

Agency Response

NHTSA has decided that the proposed procedure to remove slack when positioning the FAD is unnecessary. FMVSS No. 208 has long specified, in the context of positioning dummies for crash tests, the simple directive to "remove all slack."¹¹⁰ In NHTSA's extensive experience with FMVSS No. 208 testing, this specification has not occasioned difficulties. Accordingly, rather than specifying a new test procedure for the same action, the regulatory text in the final rule has been modified to adopt this longstanding specification. With respect to JCI's comment, the challenges noted in the testing status report concern installing instrumentation for measuring belt force on the seat belt for the research tests. This testing was conducted for research purposes and is not part of the anchorage strength test, so it does not present an issue for FMVSS No. 210 compliance testing.

With respect to the body blocks, the fact that belt tension and routing affect body block placement at preload does not present an issue for real-world compliance testing. NHTSA addressed these factors in its research because in developing the body block zones, if we had used inconsistent amounts of slack across the different tests used to create the data set from which the zones were derived, doing so would have affected the data and led to unnecessarily large zones. In real-world compliance testing, test laboratories can adjust the amount of tension on, or routing of, the belt (or the material used to replace the belt) when positioning the blocks in the zone

¹⁰⁸ Integrated seats are equipped with seats belts built into the seat itself. In an integrated seat, the entire seat belt system is contained within the seat frame.

¹⁰⁹ JCI references Appendix F in "Final Report: Development of a Combination Upper Torso and Pelvic Body Block for FMVSS 210 Test, Revision A," May 22, 2003, KARCO Engineering, LLC (NHTSA-2012-0036-0002) (referencing NHTSA-2012-0036-0002, p. 375). The reference material is a status report discussing development of the FAD positioning procedure. The page cited by JCE states that "[t]he le Sabre's integrated seat did create some challenges in getting belt force gages [sic] and belt take up mechanisms on to the belt [sic]."

¹¹⁰ S10.9, S16.3.5.4, S22.2.1.8.3.

¹⁰⁵ S5.1; S5.2.

¹⁰⁶ NPRM at pg. 19162.

¹⁰⁷ NPRM at pg. 19162.

at preload. Similarly, the routing of the belt on the torso block can be used for small adjustments to increase the distance between the torso and pelvic block to avoid interference. This technique was not required in this study because contact (interference) between the blocks was not observed before or during application of preload. Although webbing tension and belt routing affect the position of the block in the zone, they do not present a problem because the final rule explicitly provides that NHTSA, in testing for compliance, may position a body block (at preload) in any position in the applicable zone. A manufacturer must certify compliance at any position in the applicable zone.

5. Hold Time Requirement

The NPRM did not propose to alter the amount of time the required test load must be held, which is 10 seconds.¹¹¹

Comments

Honda, in its comments on the NPRM, requested that the required hold time be reduced to one second. Honda claims that “a one second hold time more closely aligns test and actual crash condition requirements while maintaining a sufficient margin of safety in the testing standards.” According to Honda, this proposed revision is consistent with NHTSA’s reasoning on FMVSS No. 225, “Child restraint anchorage systems.” Honda noted that the final rule establishing FMVSS No. 225 (68 FR 38223) reduced the hold time from ten seconds to one second because it did not result in a reduction of safety because it still surpassed the time of the actual crash event.

Agency Response

This issue is out of the scope of this rulemaking. NHTSA did not propose to alter the amount of time the required test load must be held in the NPRM. In any case, this change would potentially reduce the stringency of the requirements, which have been in place for well over 40 years.

6. Force Application Angle

The test procedure in the regulatory text has long specified that the forces be applied to the body block at an initial force application angle of not less than 5 degrees or more than 15 degrees above the horizontal.¹¹²

The agency’s research study evaluated the effect of the force application angle on the preload position of the body blocks. Position repeatability testing

with force application angles of 5°, 10°, and 15° showed that the pull angle had a small effect on the preload position; the results of three tests on multiple seating locations were within 1.3 inches (33 mm).

Comments

IMMI identified the wide tolerance for the force application angle as a source of large variance in load paths; however, it stated this tolerance is needed for ease of setup.

Agency Response

Because (as IMMI noted) a force application angle tolerance is desirable from a test setup perspective, the final rule retains the longstanding force application angle specification.

7. Use of a Dedicated Test Belt

FMVSS No. 210, S5 specifies that, when testing the seat belt anchorages, “the anchorage shall be connected to a material whose breaking strength is equal to or greater than the breaking strength of the webbing for the seat belt assembly installed as original equipment at that seating position.” For instance, some test facilities replace the seat belt with steel cable.

Comments

Honda, commenting on the NPRM, stated that a dedicated test belt that does not absorb energy is preferable when testing the strength of the seat belt assembly anchorages, and suggested that the standard should clarify that a “dedicated test belt” may be used for testing instead of the original seat belt installed in the vehicle.

Agency Response

Use of a “dedicated test belt” that does not absorb energy is allowed under S5 of the current regulation, which is unchanged by the amendments in this document. NHTSA does not see a need to further clarify this standard.

8. Testing of Side-Facing Seats

The NPRM noted that it was setting forth the proposed regulatory text in S4.2 without the clause “except for side-facing seats,” which appeared several times in the then-current S4.2. The agency explained that these clauses were made obsolete by an October 8, 2008 final rule which announced our decision to eliminate the exclusion of side-facing seats (and thus apply S4.2’s strength requirements to side-facing seats) but which failed to amend S4.2 to reflect this change.¹¹³ We stated in the

NPRM that a correcting amendment removing the clauses from S4.2 would be issued by the agency, and that in the meantime, the proposed regulatory text in the NPRM showed S4.2 in corrected form. That correcting amendment was published in 2013, with an effective date of December 16, 2013.¹¹⁴ Thus, side-facing seats in vehicles manufactured on or after that date were subject to the standard’s strength requirements.

Comments

We received a few comments regarding the applicability of the anchorage strength requirements to side-facing seats and the testing of side-facing seats to those requirements.

The National Truck Equipment Association (NTEA) commented that, while the 2008 DSP final rule eliminated the exclusion for “auxiliary seats,” it believed that “auxiliary or folding jumps seats” do not automatically designate a seat as being side-facing. It stated it was concerned that because the previous definition of DSP (prior to the 2008 DSP final rule) excluded “auxiliary seating accommodations such as temporary or folding jump seats,” removing the exclusion may not necessarily include side-facing seats, and that the current definition for DSP may exclude side-facing seats.

NTEA also commented expressing concerns regarding the proposed regulatory text for vehicles manufactured before the effective date of the regulation. NTEA noted that the proposed regulatory text made it seem like side-facing seats in vehicles manufactured at any time before the effective date of this rulemaking—including before 12/16/2013, the effective date for the removal of the exclusion for side-facing seats—were subject to the strength requirements of FMVSS No. 210. NTEA requested that NHTSA clarify the regulatory text so that it does not indicate that the anchorage strength requirements applied to side-facing seats before the December 16, 2013, effective date of the amendments that removed the side-facing seat exclusion from the standard.

of the rule, which up until then had covered only passenger cars. 35 FR 15293 (October 1, 1970). The 1970 amendments excluded side-facing seats from the strength requirements. In 2005, we proposed to remove this exclusion, as one component of a rulemaking proposal to amend the definition of “designated seating position.” 70 FR 36094 (June 22, 2005). However, when the agency published the DSP final rule in 2008 it inadvertently neglected to remove the exclusion for side-facing seats that appeared in S4.2.1 and S4.2.2 of FMVSS No. 210. 73 FR 58887 (October 8, 2008).

¹¹⁴ 78 FR 68748 (November 15, 2013).

¹¹¹ S5.1, S5.2.

¹¹² S5.1, S5.2.

¹¹³ 73 FR 58887 (October 8, 2008). FMVSS No. 210 was amended in 1970 to add multipurpose passenger vehicles, trucks, and buses to the scope

DTNA commented about the direction of the pull force for side-facing seats. DTNA stated that testing of side-facing seat belts in the direction perpendicular to the longitudinal centerline of the vehicle does not reflect real world requirements for these seat belts because the predominant forces exerted on any restraint in any vehicle will be in the direction parallel with the longitudinal centerline of the vehicle resultant from a collision impact when the vehicle is travelling in the forward direction.

Agency Response

Regarding NTEA's comment on the scope of the eliminated exclusion for side-facing seats, the changes to FMVSS No. 210 S4.2 that became effective on December 16, 2013, removed the exclusion for side-facing DSPs from the standard's strength requirements. Effective December 16, 2013, side-facing seats became subject to the anchorage strength requirements of the standard.

Regarding NTEA's comment on the proposed regulatory text for vehicles manufactured before the effective date of this rule, we are modifying the regulatory text to remove any implication that side-facing seats in vehicles manufactured before December 16, 2013, were subject to the anchorage strength requirements. DTNA's comment on the appropriateness of the test procedure for testing side-facing seats is outside the scope of this rulemaking, which is concerned with the method for applying the loads specified in the standard.

Additionally, we wish to clarify that removal of the side-facing seat exclusion made no distinction as to whether a seat is side-facing or adjustable to side facing. Thus, it is the agency's position that seats that face any direction, or can be adjusted to any direction, are subject to FMVSS No. 210 in any direction to which they can be adjusted. However, we have added regulatory text to explicitly state this position and remove any ambiguity. This language works together with the final regulatory text's use of the term "seat reference plane" to define a vertical plane that passes through the SgRP of any seat and that is parallel to the direction that the seat faces. The specified test forces are applied parallel to the seat reference plane so compliance would be required for a seat that could be adjusted to face any direction.

9. Compliance Options

The NPRM proposed replacing the current body blocks with the FAD for use as the testing device to transfer loads onto the seat belt assembly anchorages. The NPRM did not propose

any exemptions or compliance options for vehicle manufacturers, such as making the use of the FAD optional or excluding certain vehicle types from having to use the FAD for testing. In the SNPRM, NHTSA explained that it was considering specifying, either instead of or as an alternative to the FAD, zones within which the current body blocks would be placed.

Comments

As explained in section V.A., commenters had variety of concerns about the FAD. Accordingly, several NPRM commenters suggested adopting the FAD as an optional test device. JCI, in its comments on the NPRM and SNPRM, stated that the use of the FAD for testing should be phased in by making it an optional test device. Global supported the FAD if it were an optional test device. Navistar suggested making the use of the FAD an option for 30 years to avoid having to recertify vehicles that are already compliant since their vehicle life is between 20–30 years. The Alliance, commenting on the NPRM, argued that manufacturers should be given the option to use the current body blocks until Canada adopts the use of the FAD.¹¹⁵ Nissan North America, Inc. (Nissan) and Hino suggested making the FAD an optional test device to allow global manufacturers the option of using the current body blocks until testing with the FAD is globally harmonized. EMA, in its comments on the NPRM, proposed making the use of the FAD optional for manufacturers of class 3 through 8 vehicles or exempting these vehicles from having to use the FAD. DTNA also wanted to make it an optional test device for vehicles with a GVWR of more than 10,000 lb.

Consistent with these NPRM comments, in response to the SNPRM, as noted earlier (section V.B.1), several commenters supported the continued use of the body blocks. EMA, FSC, Global, and the Alliance supported the FAD as an optional test device that could be selected by the manufacturer. Global also stressed the importance of harmonization and supported the idea of making the FAD an optional test device to provide manufacturers more flexibility until there is greater international harmonization. The Alliance further commented that maintaining the current body blocks as a compliance option would negate the durability, lead-time, and cost concerns it had with respect to the FADs.

Agency Response

NHTSA has decided to retain the current body blocks and adopt the FAD as an optional test device. We believe that providing these two compliance options will allow the potential advantages of both test methods. There is a long history of compliance testing with the body blocks, and corresponding manufacturer familiarity with them. We retain this option, but at the same time, add more specificity to the test procedure so that there is no ambiguity about where the agency may position the blocks at preload. At the same time, we continue to believe that the FADs offer potential advantages, including ease of testing and the ability to test new configurations such as 4-point belts.

10. Regulatory Alternatives

NHTSA considered alternatives to the final rule. In the preceding sections of this document, we have discussed various alternatives for different aspects of the proposed requirements. Executive Order 13609¹¹⁶ provides that international regulatory cooperation can reduce, eliminate, or prevent unnecessary differences in regulatory requirements. Similarly, section 24211 of the Infrastructure, Investment, and Jobs Act directs that "[t]he Secretary [of Transportation] shall cooperate, to the maximum extent practicable, with foreign governments, nongovernmental stakeholder groups, the motor vehicle industry, and consumer groups with respect to global harmonization of vehicle regulations as a means for improving motor vehicle safety."¹¹⁷ (These directives are also discussed in the Regulatory Notices and Analyses section.) At the same time, the Safety Act authorizes NHTSA to establish motor vehicle safety standards that, among other things, are objective.

International regulations and industry consensus standards also establish seat belt anchorage strength requirements. NHTSA developed the FAD independently and it has not been adopted outside of the United States. On the other hand, other standards do mirror FMVSS No. 210 and specify the use of the body blocks. These standards include United Nations Regulation No. 14 (ECE R14), Transport Canada's Technical Standards Document No. 210, Australian ADR 05, and SAE Standard J384 (2014). All these standards specify pelvic and torso body blocks similar to the FMVSS No. 210 body blocks. There are some differences between the test

¹¹⁶ See discussion in the Regulatory Notices and Analyses section.

¹¹⁷ H.R. 3684 (117th Congress) (2021).

¹¹⁵ NHTSA–2012–0036–0009.

procedures in FMVSS No. 210 and those in these other regulations. These international and consensus standards are explained in more detail in section II.E and in other sections of the document where relevant.

Comments

We received comments regarding harmonization both with respect to the FAD and the body block zone concept.

Force Application Device. JCI, Navistar, EMA, Nissan, DTNA, Global, and Honda all mentioned concerns with harmonization in their NPRM comments. EMA stressed that a change to the U.S. standard would be a significant departure from the worldwide harmonization that manufacturers and governments strive to achieve. JCI agreed with EMA and noted that in the absence of a safety need NHTSA should not create disharmony with global regulations. Navistar, Nissan, and Global commented that manufacturers would need to conduct additional testing because of this disharmonization. The Alliance also commented that continued use of the body blocks would facilitate harmonization with Transport Canada.

Some of these commenters also suggested pursuing a global technical regulation (GTR). Global petitioned NHTSA to initiate the process for establishing a GTR under 49 CFR part 553, appendix C. Global commented that the longer time frame that would likely be necessary to adopt a GTR does not present a major concern. Honda and DTNA similarly noted that if the FAD were intended to facilitate testing or improve upon the body blocks, then a GTR would provide a better forum for developing it and facilitate global harmonization. JCI and Global reiterated their harmonization concerns in response to the SNPRM.

Body blocks and/or zone concept. A couple of commenters noted that retaining the body blocks would support harmonization. JCI and Global commented that maintaining the body blocks would harmonize with the requirements in other countries.

However, as noted earlier (see section V.B.1), comments from the Alliance, Global, FSC, Honda, and the People's Republic of China on the SNPRM appeared to question the appropriateness of specifying zones for the body blocks because they stated they believed it would not harmonize with regulations used in other countries or regions. The Alliance further recommended that NHTSA adopt the ECE R14, S6.3.4 requirements for the positioning of the pelvic and torso block during the initial test set-up, including

against the seatback, and Global and FSC also suggested that the body blocks be placed against the seat back. The People's Republic of China also suggested referring to the European standard for the pre-test positioning of the body blocks.

Agency Response

NHTSA acknowledges that international harmonization is an important goal. We believe that by providing the FAD and the current body blocks together with the placement zone as compliance options, we are maintaining opportunities for harmonization with international standards since manufacturers may choose to continue testing with the body blocks.

We do recognize that the implementation of the body block zones may conflict with ECE R14 since R14 requires that the pelvic block be "pushed back into the seat back while the belt strap is pulled tight around it," and the torso block must be "placed in position, the belt strap is fitted over the device and pulled tight."¹¹⁸ Following this requirement could preclude the torso body block from being in the required zone, depending on how much the torso block pulls away from the seat back when the preload is applied. However, as we explain in section V.B.7.a, we believe this deviation from R14 is necessary to ensure the standard is enforceable in the U.S., and because the suggested method of pushing the body blocks against the seat and cinching the seat belt tightly could potentially impact the seat structure and anchorage performance.

GTRs are developed by the World Forum for Harmonization of Vehicle Regulations (WP.29) under the 1998 Agreement on U.N. Global Technical Regulations. The WP.29 established the 1998 Agreement primarily to extend the benefits of harmonization by focusing on performance-oriented test procedures designed to quantify product behaviors as objectively as possible. This rulemaking would not impede the initiation of a GTR on seat belt anchorages. However, since the anchorage strength test in the current standard has been ruled unenforceable, the agency declines to delay amending the standard even further to wait for the initiation and completion of the GTR process.

11. Leadtime

The NPRM proposed a compliance date three years from the date of

publication of the final rule for certifying vehicles using the FAD. The agency had tentatively concluded that three years would be sufficient time for manufacturers to procure and familiarize themselves with the FADs. The SNPRM did not propose a revised lead time.

Comments

Several commenters in response to the NPRM and SNPRM requested lead time extensions for a variety of reasons.

In their comments on the NPRM, the Alliance, JCI, Hino, and Honda requested more time for additional certification testing, and/or design changes. For example, the Alliance stated that any time test procedures and hardware change, individual vehicle designs might have to be modified to remain in compliance; because FMVSS No. 210 directly tests a seat belt anchorage's structural integrity, any modifications needed to comply using the new test hardware and procedures would require changes to the vehicle structure. Such body-in-white structural changes, according to the Alliance, demand long lead-times. And, even if vehicle modification is not necessary, the new test hardware and procedures could require additional certification testing. JCI and Hino had similar comments. Accordingly, these commenters requested a longer lead time. JCI stated that seating structures are designed three to five years before a new vehicle is introduced, and in response to the SNPRM stated that a five-year lead time would be necessary to incorporate the FAD requirement. The Alliance requested that the FAD be an optional test device for a period of 8 to 10 years. Honda suggested a three-year lead time in part to give manufacturers time to modify its test procedures to include the use of FAD1 and FAD2.

Some NPRM commenters argued that heavy vehicles and/or light trucks have long platform or model lives, and argued that a longer lead time was necessary to avoid significant additional costs. EMA and DTNA commented that 30 to 40 years of lead time was necessary for heavy-duty trucks. EMA explained that heavy truck cabs often stay in production for as long as 30 years because the heavy-duty market has relatively low volumes, so a manufacturer may use one basic cab structure for many product variations over time, such that the compliance testing that was done when the cab shell was originally developed often remains valid for many years. Accordingly, EMA believed that the only way to avoid the significant costs and potential liability

¹¹⁸ UN Regulation No. 14 Revision 7—7 August 2023, Section 6.3.4.

of re-testing is to allow at least 30 years of lead time before testing with a FAD would be required. (In response to the SNPRM, EMA suggested that the final rule should include a provision that the new requirements would only apply to newly developed cab structures since no safety need was established.) DTNA similarly commented that lead time should be 30 to 40 years. Hino stated that the model lives of heavy-duty trucks are longer than those for passenger cars and can exceed 10 years, and requested that that existing vehicle platforms be exempt from the new requirements for the entire model life of the vehicle with a maximum allowable period of 10 years from the effective date. The Alliance noted that vehicles such as light trucks can maintain a single body structure for many years, and requested a lead time of 8 to 10 years. RVIA commented that the use of the FADs should not be required until changes in the seating or vehicle structure requires retesting of the vehicle for compliance. EvoBus suggested a five-year lead time, because the proposed three years is too short with respect to the life cycles of current seats in buses and motorcoach buses.

NPRM commenters also cited the time it would take to procure FADs as another reason for a longer lead time. JCI stated that the proposed use of the FAD would result in demand for large volumes of FADs, and that none are likely to be available in the marketplace until after the final rule is published. Because there is no identified safety need for new test devices, allowing the requisite time to transition to the FADs and/or allowing for their optional concurrent use would not detract from any safety enhancement. The Alliance estimated that it would take 26 weeks before the first FADs could be delivered, and that additional time would be needed to gain experience using the FADs. Honda suggested that the effective date be three years from the time (after publication of the final rule) at which NHTSA can confirm that vehicle manufacturers, suppliers, and test laboratories have sufficient FAD inventories. Honda stated that this approach would accommodate the minimum six-month delivery time for dummy suppliers to produce dummies and the time required for every vehicle manufacturer, supplier, and test laboratory to purchase enough FADs. DTNA noted that it was unaware of who supplied the FADs and their availability.

Agency Response

Providing vehicle manufacturers the option to continue to use the current

body blocks or the FAD for certification should alleviate the lead time concerns with certifying vehicles using the FAD. We are providing a two-year lead time for both options. Consistent with 49 CFR 571.8(b), multi-stage manufacturers and alterers would have an additional year to comply.

We believe this is a reasonable lead time for the body blocks. The body blocks have been part of the regulatory test procedure for the anchorage strength requirements since 1970.¹¹⁹ The zones that we are adopting in this rule are simply a clarification of the existing test procedure. Whereas the current version of the standard does not specify where the agency will place the body block on the seat when conducting compliance testing, the amendments in this document specify zones within which the agency will place the body blocks. This specification essentially serves to restrict the agency's discretion by restricting the possible test configurations to those bounded by the zones. Accordingly, we do not believe that manufacturers should have more trouble certifying compliance with the amended body block test procedure than they do with the current version. Moreover, as we noted earlier, in the agency's history of compliance testing for the anchorage strength requirements there have been few failures, indicating that manufacturers generally do not have trouble passing this test; we do not anticipate any need for redesign of currently compliant seat belt anchorages. Nevertheless, we are providing a two-year lead time to allow manufacturers to become familiar with the zones.

We are providing the same two-year lead time for the FAD. If a vehicle manufacturer prefers not to certify using the FAD, or is interested in certifying using the FAD but concludes that it would not be able to do so within the two-year lead time, it can certify to the body blocks, as explained above. Manufacturers that are interested in certifying to the FAD but would like additional time to verify compliance of existing vehicle platforms may continue certifying to the body blocks until they are confident in certifying to the FAD.

VI. Regulatory Notices and Analyses

Executive Orders (E.O.) 12866, 13563, and 14094 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this regulatory action under Executive Order 12866, Executive Order 14094,

Executive Order 13563, and the Department of Transportation's regulatory policies and procedures.¹²⁰ This rulemaking action was not reviewed by the Office of Management and Budget under E.O. 12866. It is also not considered "of special note to the Department" under DOT Order 2100.6A. We have considered the qualitative costs and benefits of the proposed rule under the principles of E.O. 12866.

This document amends FMVSS No. 210 to specify zones for the placement of the currently-use body blocks, and to specify an optional alternative test device, the Force Application Device. The final rule makes minor changes to the existing test procedures that would apply to testing with either the body blocks or the FAD (minor changes in how the seat and shoulder belt anchorage height are adjusted). The final rule also sets out a simple procedure for positioning the body block, and simple procedures for choosing and seating the FAD. The amendments do not change the standard's strength requirements, and we do not expect these changes to have a meaningful impact on test outcomes. There are some minor costs and benefits compared to the baseline of testing with the body blocks without a zone placement procedure.

Body Blocks with zone procedure. The benefit of the amendment is a more objective and repeatable test, which could ultimately reduce the potential need for re-testing. Because this is an additional step in the test procedure, there may be some minor, incremental costs—primarily a somewhat increased time to set up for the test—associated with positioning the body blocks and ensuring that they are within the specified zones at the start of the test.

Force Application Device. We estimate the cost of each FAD, both the FAD1 and FAD2, to be approximately \$8,000 each. Assuming a vehicle manufacturer or testing facility purchases a set of two FAD1s and three FAD2s, the principal cost associated with the NPRM is the one-time 14 purchase cost of the set, totaling \$40,000. Because the use of the FADs is optional, manufacturers can choose to continue testing with body blocks and not incur the cost of purchasing FADs. As discussed above, the FADs require less effort, time, and personnel to install in the test vehicle. Thus, we believe that for manufacturers that chose to test using FADs, there would be associated

¹¹⁹ 35 FR 15293 (October 1, 1970) (final rule amending FMVSS No. 210 with, among other things, the body blocks).

¹²⁰ 49 CFR part 5, subpart B; Department of Transportation Order 2100.6A, Rulemaking and Guidance Procedures, June 7, 2021.

cost savings that could offset the purchase cost of the FADs. The FAD2 is smaller than the FAD1 and would enable NHTSA to test belt anchorages at DSPs that do not fit the latter device. However, additional safety benefits accruing beyond those already attributable to FMVSS No. 210 cannot be quantified.

Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides that the regulatory approaches taken by foreign governments may differ from those taken by the United States to address similar issues, and that in some cases the differences between them might not be necessary and might impair the ability of American businesses to export and compete internationally. It further recognizes that in meeting shared challenges involving health, safety, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation and can reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

This rule is different from comparable foreign regulations. For the reasons described in this preamble, these differences are necessary to ensure the standard is enforceable in the U.S. and to give manufacturers additional compliance options.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not subject to the Executive order because it is not economically significant as defined in E.O. 12866.

Executive Order 13132 (Federalism)

NHTSA has examined this final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking

process. The agency has concluded that the final rule would not have federalism implications 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: “When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.” 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law address the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.” 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

NHTSA rules can also preempt State law if is complying with the FMVSS would render the motor vehicle manufacturers liable under State tort law. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency’s ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.*, the language and

structure of the regulatory text) and objectives of this rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this final rule will preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by this rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard in this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Severability

The issue of severability of FMVSSs is addressed in 49 CFR 571.9. It provides that if any FMVSS or its application to any person or circumstance is held invalid, the remainder of the part and the application of that standard to other persons or circumstances is unaffected.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small Government jurisdictions. The Act requires agencies to prepare and make available an initial and final regulatory flexibility analysis (RFA) describing the impact of proposed and final rules on small entities. An RFA is not required if the head of the agency certifies that the proposed or final rule will not have a significant impact on a substantial number of small entities. The head of the agency has made such a certification with regard to this final rule.

The factual basis for the certification (5 U.S.C. 605(b)) is set forth below. Although the agency is not required to issue an initial regulatory flexibility analysis, this section discusses many of the issues that an initial regulatory flexibility analysis would address.

Section 603(b) of the Act specifies the content of an RFA. Each RFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and legal basis for a final rule;
3. A description of and, where feasible, an estimate of the number of small entities to which the final rule will apply;
4. A description of the projected reporting, recording keeping and other compliance requirements of a final rule including an estimate of the classes of

small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the final rule;

6. Each final regulatory flexibility analysis shall also contain a description of any significant alternatives to the final rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the final rule on small entities.

A description of the reason why action by the agency is being considered and the objectives of, and legal basis for, the final rule are discussed at length earlier in this document.

This final rule will directly affect manufacturers subject to FMVSS No. 210. The Small Business Administration's size standard regulation at 13 CFR part 121, "Small business size regulations," prescribes small business size standards by North American Industry Classification System (NAICS) codes. NAICS code 336211, Motor Vehicle Body Manufacturing, prescribes a small business size standard of 1,000 or fewer employees. NAICS code 336390, Other Motor Vehicle Parts Manufacturing, prescribes a small business size standard of 1,000 or fewer employees. Most motor vehicle manufacturers would not qualify as a small business. There are a number of vehicle manufacturers that are small businesses.

This rule does not create any new reporting or recording requirements, nor does it affect any existing reporting or recording requirements. Small manufacturers have options available to certify compliance, none of which will result in a significant economic impact on these entities. The final rule provides manufacturers with the flexibility to determine the most cost-effective means of meeting the requirements. As a result, small manufacturers can choose which option, either continuing use of the body block or using the FAD, is most suitable for them.

We know of no Federal rules which duplicate, overlap, or conflict with the final rule. The final rule provides compliance options (alternatives) to manufacturers, including small entities. This flexibility reduces the economic impact of the final rule on small entities. NHTSA also designed the final rule to provide two years of lead time for the use of the body blocks and the FAD as established by this final rule. It also provides an additional year for multi-stage manufacturers and alterers

to comply with the final rule. (49 CFR 571.8(b).) This additional year provides these entities flexibility and ample time—a total of three years from publication of a final rule—to work with seat manufacturers and/or incomplete vehicle manufacturers (both of which are large entities), or to undertake the evaluation themselves, to make the necessary assessments to acquire a basis for certifying their vehicles' compliance.

National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Civil Justice Reform

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this order, NHTSA notes as follows: The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid control number from the Office of Management and Budget (OMB). This final rule does not have any requirements that are considered to be information collection requirements as defined by the OMB in 5 CFR part 1320.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995

(NTTAA),¹²¹ "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments."¹²² However, if the use of such technical standards would be "inconsistent with applicable law or otherwise impractical, a Federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies[.]"¹²³ Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies such as SAE. The NTTAA directs the agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. Circular A-119 directs that evaluating whether to use a voluntary consensus standard should be done on a case-by-case basis.¹²⁴ An agency should consider, where applicable, factors such as the nature of the agency's statutory mandate and the consistency of the standard with that mandate.¹²⁵

The agency identified an SAE standard (J384, Rev. 2014) that has testing recommendations for seat belt anchorages. The standard recommends the use of body blocks, similar to those currently specified in FMVSS No. 210, for applying the required test loads. SAE J384 specifies test procedures for seat belt anchorages. It is nearly identical to FMVSS No. 210, with similar body block specifications (the torso body block has the same dimensions, but also includes a pull arm), test loads, and the option to replace the seat belt webbing with other material. The standard specifies a preload of 10%. The body blocks are positioned at each DSP and the seat belts are positioned around the blocks "to represent design intent routing."

The SAE standard does not specify a zone for body block placement, nor does it permit the use of the FAD. The preamble explains why NHTSA believes

¹²¹ National Technology Transfer and Advancement Act of 1995, Public Law 104-113, 110 Stat. 775 (1996).

¹²² *Id.* at section 12(d)(1).

¹²³ *Id.* at section 12(d)(3).

¹²⁴ Office of Management and Budget, Circular No. A-119, ¶ 5(a)(i), Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (Jan. 26, 2016).

¹²⁵ *Id.*

these deviations from consensus standards are justified. In short, the body block placement zones are necessary to ensure that the standard is enforceable. With respect to the FAD, manufacturers may continue to certify to the requirements as tested with the body blocks if they do not want to use this new test device. But NHTSA believes that the FAD does have advantages over the body blocks, including that the FADs require significantly less effort and time to install in a test vehicle.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by States, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation with base year of 1995) in any one year. Adjusting this amount by the implicit gross domestic product price deflator for 2022 results in \$177 million ($111.416/75.324 = 1.48$). The assessment may be included in conjunction with other assessments, as it is here.

This rule would not result in expenditures by State, local, or tribal governments of more than \$177 million annually.

UMRA requires the agency to select the “least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.” As discussed above, the agency considered alternatives to the final rule and has concluded that the requirements are the most cost-effective alternatives that achieve the objectives of the rule.

Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing it, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit www.dot.gov/privacy.html.

Plain Language

Executive Order 12866 and E.O. 13563 require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public’s needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn’t clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

NHTSA has considered these questions and attempted to use plain language in writing this rule. Please inform the agency if you can suggest how NHTSA can improve its use of plain language.

Submission of Confidential Information

You should submit a redacted “public version” of your comment (including redacted versions of any additional documents or attachments). This “public version” of your comment should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

You also need to submit a request for confidential treatment directly to the Office of Chief Counsel. Requests for confidential treatment are governed by

49 CFR part 512. Your request must set forth the information specified in part 512. This information includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to § 512.8; and a certificate, pursuant to § 512.4(b) and part 512, appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to § 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[].”

You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to § 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment).

NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

VII. Appendices to the Preamble

A. Appendix A: List of Comments

COMMENTS TO THE NPRM

Commenter	Comment ID
Alliance of Automobile Manufacturers	NHTSA–2012–0036–0009
American Honda Motor Co., Inc	NHTSA–2012–0036–0016
Association of Global Automakers	NHTSA–2012–0036–0021
Daimler Trucks North America LLC	NHTSA–2012–0036–0010

COMMENTS TO THE NPRM—Continued

Commenter	Comment ID
EvoBus GmbH	NHTSA-2012-0036-0004
Freedman Seating Company	NHTSA-2012-0036-0008
Hino Motors, Ltd	NHTSA-2012-0036-0006
Johnson Controls, Inc	NHTSA-2012-0036-0015
National Truck Equipment Association	NHTSA-2012-0036-0007
Navistar, Inc	NHTSA-2012-0036-0013
Navistar, Inc	NHTSA-2012-0036-0014
Nissan North America, Inc	NHTSA-2012-0036-0012
Recreation Vehicle Industry Association	NHTSA-2012-0036-0017
Truck and Engine Manufacturers Association	NHTSA-2012-0036-0011
TÜEV Rheinland Kraftfahrt gMBH	NHTSA-2012-0036-0005

COMMENTS TO THE SNPRM

Commenter	Comment ID
Alliance of Automobile Manufacturers	NHTSA-2012-0036-0025
American Honda Motor Co., Inc	NHTSA-2012-0036-0030
Association of Global Automakers, Inc	NHTSA-2012-0036-0029
Freedman Seating Co	NHTSA-2012-0036-0027
IMMI	NHTSA-2012-0036-0024
Johnson Controls Inc	NHTSA-2012-0036-0026
Jung Ho Yoo	NHTSA-2012-0036-0031
People's Republic of China	NHTSA-2012-0036-0032
Truck and Engine Manufacturers Association	NHTSA-2012-0036-0028

COMMENTS TO THE NOTICE OF AVAILABILITY OF TECHNICAL DOCUMENTS

Commenter	Comment ID
Alliance of Automobile Manufacturers	NHTSA-2012-0036-0047
Truck and Engine Manufacturers Association	NHTSA-2012-0036-0048

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

- 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

- 2. Amend § 571.5 by adding paragraphs (k)(8) and (9) to read as follows:

§ 571.5 Matter incorporated by reference.

* * * * *

(k) * * *

(8) “Drawing Package for the Force Application Device 1 (FAD1),” April 9, 2024, into § 571.210.

(9) “Drawing Package for the Force Application Device 2 (FAD2),” April 9, 2024, into § 571.210.

* * * * *

- 3. Amend § 571.210 by:

- a. Adding, in alphabetical order, definitions of “Actuator,” “Bridged pull yoke,” “FAD,” “FAD1,” “FAD2,” “Midsagittal plane,” and “Seat reference plane” to paragraph S3;
- b. Revising paragraphs S4.2.1 and S4.2.2;
- c. Adding paragraph S4.2.6;
- d. Revising paragraphs S5, S5.1, and S5.2;
- e. Adding paragraphs S5.3, S5.3.1, S5.3.2, S5.4, and S5.5;
- f. Removing Figures 2A, 2B, and 3;
- g. Adding Figures 2A, 2B, 3, 6, 7, and 8 in numerical order at the end of the section; and
- h. Adding Table 1 at the end of the section.

The revisions and additions read as follows:

§ 571.210 Standard No. 210; Seat belt assembly anchorages.

* * * * *

S3. Definitions.

Actuator means the device used to apply the load in performing testing.

Bridged pull yoke means the yoke that bridges the torso and pelvis on the FAD1 or FAD2 and is used for testing Type 1 seat belt assemblies.

FAD means the force application device, either the FAD1 or the FAD2, a

one-piece device consisting of an upper torso portion and a pelvic portion hinged together.

FAD1 means the larger version of the force application device specified in drawings NHTSA221-210-01, “Drawing Package for the Force Application Device 1 (FAD1),” April 9, 2024 (incorporated by reference, see § 571.5). FAD1 is depicted in figure 7 to this standard (figure provided for illustration purposes).

FAD2 means the smaller version of the force application device specified in drawings NHTSA221-210-01J, “Drawing Package for the Force Application Device 2 (FAD2),” April 9, 2024 (incorporated by reference; see § 571.5). FAD2 is depicted in figure 8 to this standard (figure provided for illustration purposes).

Midsagittal plane means the vertical plane that separates the FAD into equal left and right halves.

* * * * *

Seat reference plane means the vertical plane that passes through the “seating reference point” (as defined at 49 CFR 571.3) and is parallel to the direction that the seat faces.

* * * * *

S4.2 *Strength.*

S4.2.1 *Seats with Type 1 or certain Type 2 seat belt assemblies.*

(a) For vehicles manufactured on or after September 17, 2024, and before September 1, 2027, except as provided in S4.2.5, the anchorages, attachment hardware, and attachment bolts for any of the following seat belt assemblies shall withstand a 22,241 N (5,000 pound) force when tested in accordance with, at the choice of the manufacturer, S5.1(a), (b), or (c):

(1) Type 1 seat belt assembly; and
(2) Lap belt portion of either a Type 2 or automatic seat belt assembly, if such seat belt assembly is equipped with a detachable upper torso belt.

(b) For vehicles manufactured on or after September 1, 2027, except as provided in S4.2.5, the anchorages, attachment hardware, and attachment bolts for any of the following seat belt assemblies shall withstand a 22,241 N (5,000 pound) force when tested in accordance with, at the choice of the manufacturer, S5.1(b) or (c):

(1) Type 1 seat belt assembly; and
(2) Lap belt portion of either a Type 2 or automatic seat belt assembly, if such seat belt assembly is equipped with a detachable upper torso belt.

S4.2.2 *Seats with certain Type 2 or automatic seat belt assemblies.*

(a) For vehicles manufactured on or after September 17, 2024, and before September 1, 2027, except as provided in S4.2.5, the anchorages, attachment hardware, and attachment bolts for any of the following seat belt assemblies shall withstand a 13,345 N (3,000 pound) force applied to the lap belt portion of the seat belt assembly simultaneously with a 13,345 N (3,000 pound) force applied to the shoulder belt portion of the seat belt assembly, when tested in accordance with, at the choice of the manufacturer, S5.2(a), (b), or (c):

(1) Type 2 and automatic seat belt assemblies that are installed to comply with Standard No. 208 (49 CFR 571.208); and

(2) Type 2 and automatic seat belt assemblies that are installed at a seating position required to have a Type 1 or Type 2 seat belt assembly by Standard No. 208 (49 CFR 571.208).

(b) For vehicles manufactured on or after September 1, 2027, except as provided in S4.2.5, the anchorages, attachment hardware, and attachment bolts for any of the following seat belt assemblies shall withstand a 13,345 N (3,000 pound) force applied to the lap belt portion of the seat belt assembly simultaneously with a 13,345 N (3,000 pound) force applied to the shoulder belt portion of the seat belt assembly,

when tested in accordance with, at the choice of the manufacturer, S5.2(b) or (c):

(1) Type 2 and automatic seat belt assemblies that are installed to comply with Standard No. 208 (49 CFR 571.208); and

(2) Type 2 and automatic seat belt assemblies that are installed at a seating position required to have a Type 1 or Type 2 seat belt assembly by Standard No. 208 (49 CFR 571.208).

* * * * *

S4.2.6 *Manufacturer's choice of compliance option.* The manufacturer shall select the compliance option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. Each manufacturer shall, upon the request from the National Highway Traffic Safety Administration, provide information regarding which of the compliance options it selected for a particular vehicle or make/model.

* * * * *

S5. *Test procedures.*

(a) *General provisions.* Where a range of values is specified, the vehicle shall be able to meet the requirements at all points within the range. The anchorage shall be connected to material whose breaking strength is equal to or greater than the breaking strength of the webbing for the seat belt assembly installed as original equipment at that seating position. The geometry of the attachment duplicates the geometry, at the initiation of the test, of the attachment of the originally installed seat belt assembly.

(b) *Seat adjustment.* If adjustable, the seat shall be adjusted in the following way. Using any seat adjustment controls, place the seat and its components into the configurations and positions of the rearmost normal design driving or riding position consistent with the seating reference point (SgRP), where rearmost is in reference to the direction the seat is facing. The seat may face any direction in which it can be occupied while the vehicle is in motion.

(c) *Shoulder belt anchorage height adjustment.* The shoulder belt anchorage height adjustment (D-ring) may be set to any height.

S5.1 *Seats with Type 1 or certain Type 2 seat belt assemblies.*

(a) Apply a force of 22,241 N (5,000 pounds) in the direction in which the seat faces to a pelvic body block as described in figure 2A to this standard, in a plane parallel to the seat reference plane with an initial force application angle of not less than 5 degrees or more than 15 degrees above the horizontal. Apply the force at the onset rate of not more than 222,411 N (50,000 pounds)

per second. Attain the 22,241 N (5,000 pound) force in not more than 30 seconds and maintain it for 10 seconds. At the manufacturer's option, the pelvic body block described in figure 2B to this standard may be substituted for the pelvic body block described in figure 2A to apply the specified force to the center set(s) of anchorages for any group of three or more sets of anchorages that are simultaneously loaded in accordance with S4.2.4.

(b) Choose the FAD(s) in accordance with S5.4 and position the FAD(s) in accordance with S5.5. Apply a force of 22,241 N (5,000 pounds) to the actuator attachment point of the bridged pull yoke attached to the FAD1 or FAD2 in the direction in which the seat faces, in a plane parallel to the seat reference plane with an initial force application angle of not less than 5 degrees or more than 15 degrees above the horizontal. Apply the force at the onset rate of not more than 222,411 N (50,000 pounds) per second. Attain the 22,241 N (5,000 pound) force in not more than 30 seconds and maintain it for 10 seconds.

(c) Apply a force of 22,241 N (5,000 pounds) in the direction in which the seat faces to a pelvic body block as described in figure 2A to this standard and positioned in accordance with S5.3.1, in a plane parallel to the seat reference plane with an initial force application angle of not less than 5 degrees or more than 15 degrees above the horizontal. Apply the force at the onset rate of not more than 222,411 N (50,000 pounds) per second. Attain the 22,241 N (5,000 pound) force in not more than 30 seconds and maintain it for 10 seconds. At the manufacturer's option, the pelvic body block described in figure 2B to this standard may be substituted for the pelvic body block described in figure 2A to apply the specified force to the center set(s) of anchorages for any group of three or more sets of anchorages that are simultaneously loaded in accordance with S4.2.4.

S5.2 *Seats with certain Type 2 or automatic seat belt assemblies.*

(a) Apply forces of 13,345 N (3,000 pounds) in the direction in which the seat faces simultaneously to a pelvic body block (as described in figure 2A to this standard) and an upper torso body block (as described in figure 3 to this standard) in a plane parallel to the seat reference plane with an initial force application angle of not less than 5 degrees or more than 15 degrees above the horizontal. Apply the forces at the onset rate of not more than 133,447 N (30,000 pounds) per second. Attain the 13,345 N (3,000 pound) force in not more than 30 seconds and maintain it

for 10 seconds. At the manufacturer's option, the pelvic body block described in figure 2B to this standard may be substituted for the pelvic body block described in figure 2A to apply the specified force to the center set(s) of anchorages for any group of three or more sets of anchorages that are simultaneously loaded in accordance with S4.2.4.

(b) Choose the FAD(s) in accordance with S5.4 and position the FAD(s) in accordance with S5.5. Apply forces of 13,345 N (3,000 pounds) in the direction in which the seat faces simultaneously, to the eye bolt attached to the pull bracket of the torso pull yoke on the FAD and the thru hole on the pelvis of the FAD in a plane parallel to the seat reference plane with an initial force application angle of not less than 5 degrees or more than 15 degrees above the horizontal. Apply the forces at the onset rate of not more than 133,447 N (30,000 pounds) per second. Attain the 13,345 N (3,000 pound) force in not more than 30 seconds and maintain it for 10 seconds.

(c) Position a pelvic body block (as described in figure 2A to this standard) and an upper torso body block (as described in figure 3 to this standard) as described in S5.3. There shall be no contact between the pelvic and torso body blocks at the end of the preload force application (*i.e.*, before the test force is applied). Apply forces of 13,345 N (3,000 pounds) in the direction in which the seat faces simultaneously to the pelvic body block and the upper torso body block in a plane parallel to the seat reference plane with an initial force application angle of not less than 5 degrees or more than 15 degrees above the horizontal. Apply the forces at the onset rate of not more than 133,447 N (30,000 pounds) per second. Attain the 13,345 N (3,000 pound) force in not more than 30 seconds and maintain it for 10 seconds. At the manufacturer's option, the pelvic body block described in figure 2B to this standard may be substituted for the pelvic body block described in figure 2A to apply the specified force to the center set(s) of anchorages for any group of three or more sets of anchorages that are simultaneously loaded in accordance with S4.2.4.

S5.3 Body Block Zones.

S5.3.1 Pelvic Body Block Zone.

(a) With a 1,335 N (300 pound) force being applied to the pelvic body block

in the direction in which the seat faces, the target depicted in figure 2A or figure 2B to this standard shall lie within the zone described in S5.3.1(a)(1) through (3) and in table 1 to this standard (and depicted in figure 6 to this standard):

(1) At or rearward of the transverse vertical plane of the vehicle located 50 mm longitudinally forward of the SgRP and at or forward of the transverse vertical plane located 155 mm rearward of the SgRP.

(2) At or below the horizontal plane located 210 mm above the SgRP and at or above the horizontal plane 65 mm above the SgRP.

(3) At or rightward of the plane parallel to the seat reference plane and located 170 mm to the left of the SgRP and at or leftward of the plane parallel to the seat reference plane and located 170 mm to the right of the SgRP.

S5.3.2 Torso Body Block Zone.

(a) With a 1,335 N (300 pound) force being applied to the torso body block in the direction in which the seat faces, the target depicted in figure 3 to this standard shall lie within the zones described in S5.3.2(a)(1) through (3) and in table 1 to this standard (and depicted in figure 6 to this standard):

(1) At or rearward of the transverse vertical plane of the vehicle located 230 mm longitudinally forward of the SgRP and at or forward of the transverse vertical plane located 10 mm rearward of the SgRP.

(2) At or below the horizontal plane located 425 mm above the SgRP and at or above the horizontal plane 180 mm above the SgRP.

(3) At or rightward of the plane parallel to the seat reference plane and located 265 mm to the left of the SgRP and at or leftward of the plane parallel to the seat reference plane and located 265 mm to the right of the SgRP.

S5.4 Choice of FAD.

(a) If testing in accordance with S4.2.4, position a FAD1 in accordance with S5.5 at each DSP being simultaneously tested. If there is contact between adjacent FAD1s when positioned as required by S5.5, or if adjacent FAD1s cannot be positioned as required by S5.5 due to contact with each other, then replace the FAD1(s) according to the following hierarchy.

(1) For forward or rearward facing designated seating positions:

(i) If contact occurs between a FAD1 in an inboard seat and a FAD1 in an

outboard seat, replace the FAD1 in the inboard seat with a FAD2.

(ii) If contact occurs between adjacent FAD1s in inboard seats, replace the FAD1 on the right-hand side (as viewed in the direction the seat is facing) with a FAD2. For multiple instances of contact between FAD1s, begin replacing FAD1s at the rightmost seating position.

(iii) If contact occurs between an inboard FAD1 and an inboard FAD2, replace the FAD1 with a FAD2.

(iv) If contact occurs between a FAD1 in an outboard seat and a FAD2 in an inboard seat, replace the FAD1 in the outboard seat with a FAD2.

(2) For non-forward and non-rearward facing designated seating positions:

(i) If contact occurs between adjacent FAD1s, replace the FAD1 on the right-hand side (as viewed in the direction the seat is facing) with a FAD2. If contact remains, replace the FAD1 on the left-hand side with a FAD2. For multiple instances of contact between FAD1s, begin replacing FAD1s at the rightmost seating position.

S5.5 FAD Positioning Procedure.

(a) Place the FAD1 or FAD2 on the seat such that the midsagittal plane is parallel to and within 10 mm of the seat reference plane, with the torso portion of the FAD contacting the seat back.

(b) While keeping the midsagittal plane within 10 mm of the seat reference plane, move the pelvis portion of the FAD toward the seat back until it contacts the seat back.

(c) If the torso is not in contact with the seat back, rotate the torso portion of the FAD while holding the pelvis in place until the back of the torso contacts the seat back.

(d) Buckle and position the seat belt so that the lap belt secures the pelvis portion of the FAD and the shoulder belt secures the torso portion of the FAD.

(e) Remove all slack from the seat belt.

(f) If testing a Type 2 or Type 2A seat belt assembly, attach one actuator to the eye bolt attached to the pull bracket of the torso pull yoke on the FAD and one to the thru hole on the pelvis of the FAD. If testing a Type 1 seat belt assembly, attach the actuator to the actuator attachment point on the bridged pull yoke attached to the FAD.

* * * * *

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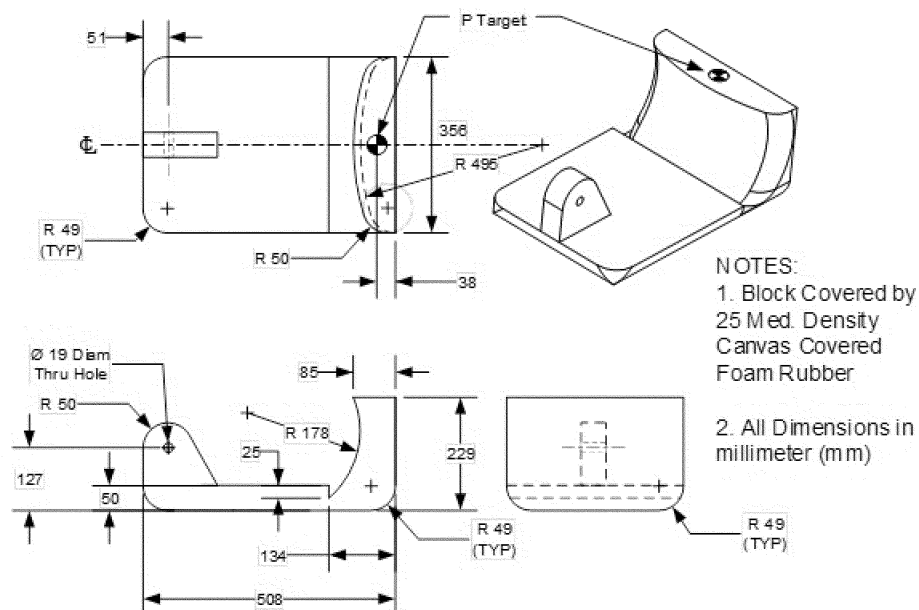


Figure 2A to § 571.210—Body Block for Lap Belt Anchorage and Target Location

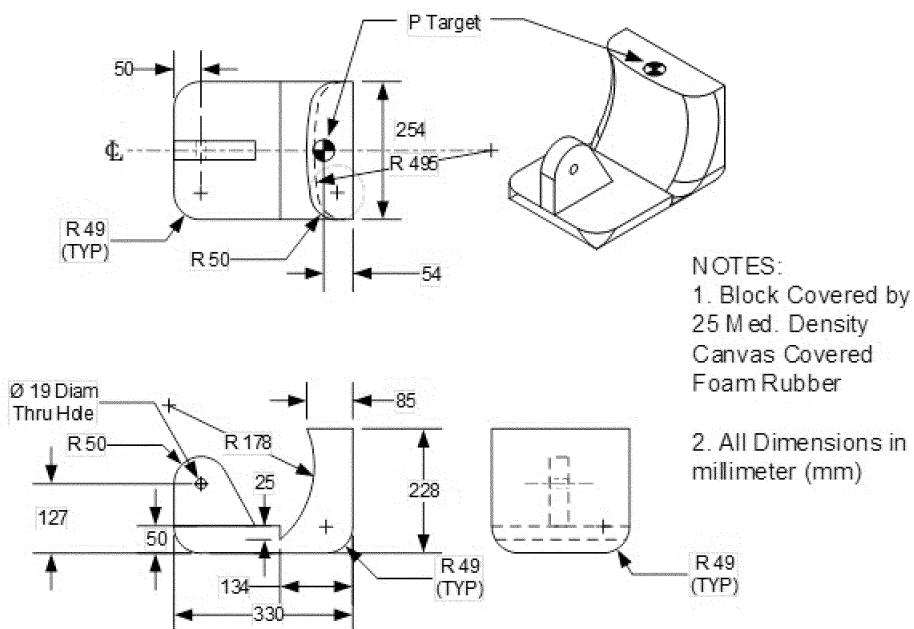


Figure 2B to § 571.210—Optional Body Block for Center Seating Positions Lap Belt Anchorage and Target Location

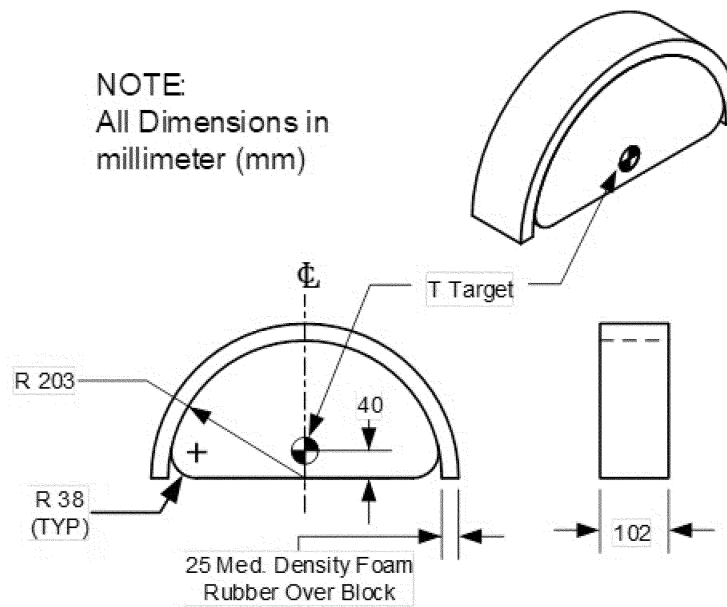


Figure 3 to § 571.210—Body Block for
Combination Shoulder and Lap Belt
Anchorage and Target Location

* * * * *

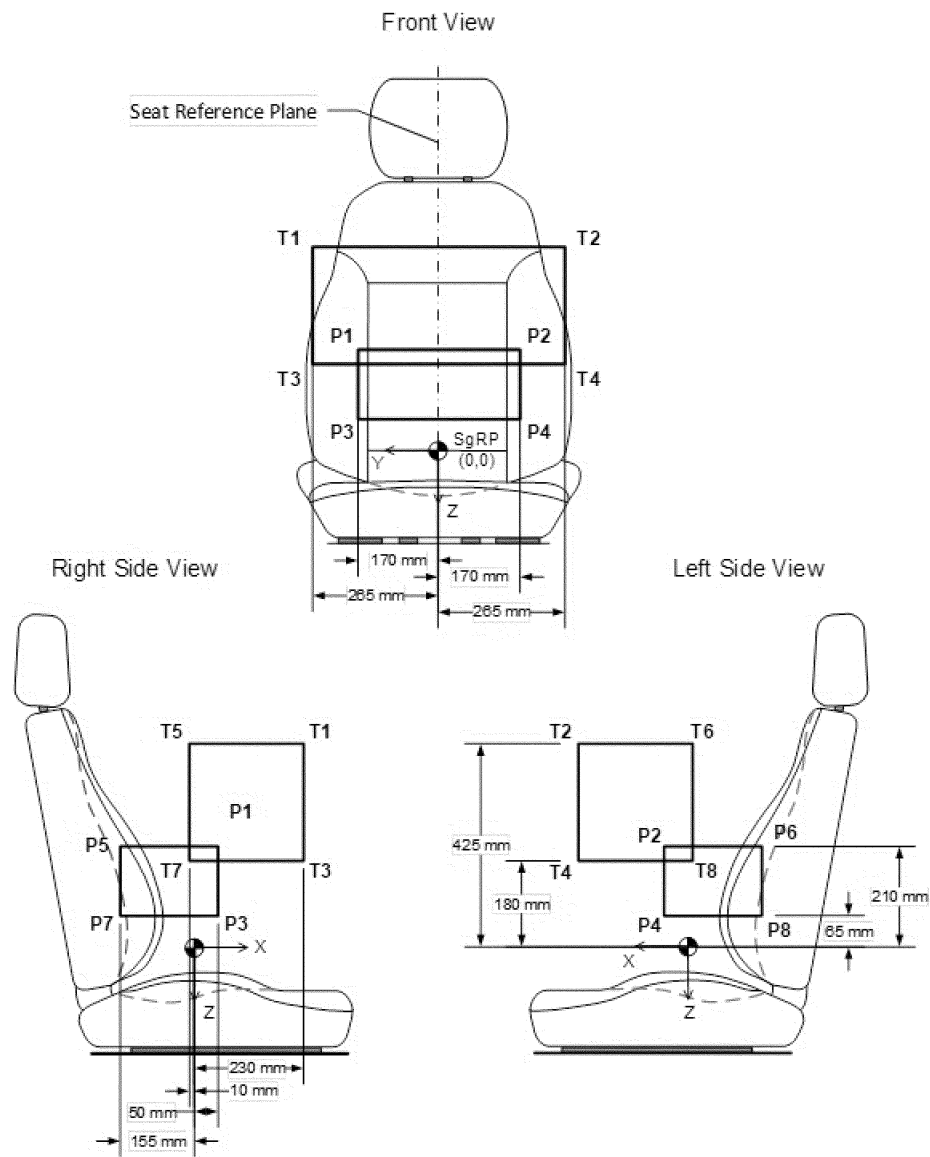


Figure 6 to § 571.210—Body Block Zones (provided for illustration purposes)

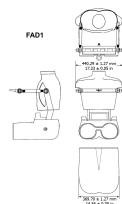


Figure 7 to § 571.210—FAD1 (provided for illustration purposes)

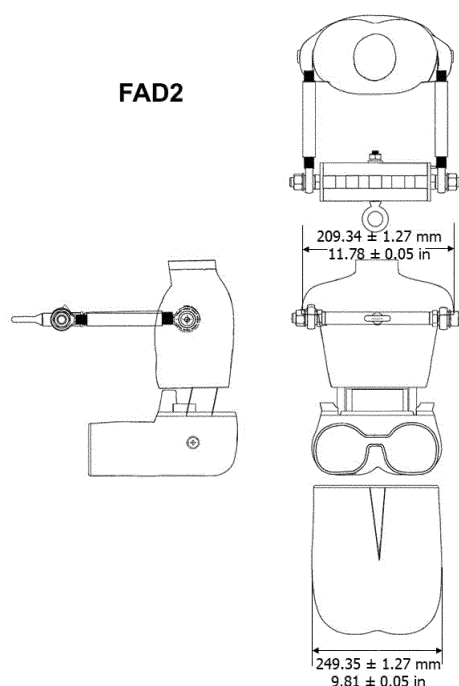


Figure 8 to § 571.210—FAD2 (provided for illustration purposes)

TABLE 1 TO § 571.210—COORDINATES OF THE VERTICES FROM THE SgRP

Coordinates of Zone Vertices from SgRP; [(X,Y,Z) in (mm) and (in)]					
Vertices of Torso Body Block Zone	T1	(230, 265, -425) (9.1, 10.4, -16.7)	Vertices of Pelvic Body Block Zone	P1	(50, 170, -210) (2, 6.7, -8.3)
	T2	(230, -265, -425) (9.1, -10.4, -16.7)		P2	(50, -170, -210) (2, -6.7, -8.3)
	T3	(230, 265, -180) (9.1, 10.4, -7.1)		P3	(50, 170, -65) (2, 6.7, -2.6)
	T4	(230, -265, -180) (9.1, -10.4, -7.1)		P4	(50, -170, -65) (2, -6.7, -2.6)
	T5	(-10, 265, -425) (-.4, 10.4, -16.7)		P5	(-155, 170, -210) (-6.1, 6.7, -8.3)
	T6	(-10, -265, -425) (-.4, -10.4, -16.7)		P6	(-155, -170, -210) (-6.1, -6.7, -8.3)
	T7	(-10, 265, -180) (-.4, 10.4, -7.1)		P7	(-155, 170, -65) (-6.1, 6.7, -2.6)
	T8	(-10, -265, -180) (-.4, -10.4, -7.1)		P8	(-155, -170, -65) (-6.1, -6.7, -2.6)

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2024-19727 Filed 9-16-24; 8:45 am]

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Part IV

Department of Health and Human Services

42 CFR Part 93

Public Health Service Policies on Research Misconduct; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES**42 CFR Part 93**

RIN 0937-AA12

Public Health Service Policies on Research Misconduct**AGENCY:** U.S. Department of Health and Human Services (HHS).**ACTION:** Final rule.

SUMMARY: This final rule revises the regulations governing Public Health Service Policies on Research Misconduct. The final rule reflects both substantive and non-substantive revisions in response to public comments and to improve clarity. The purpose of the final rule is to implement policy changes and respond to technological changes that occurred over the past several years applicable to research misconduct.

DATES: *Effective Date:* This final rule is effective January 1, 2025.

Applicability Date: All regulatory requirements are applicable beginning on or after January 1, 2026.

ADDRESSES: Address any comments or questions regarding the final rule to Sheila R. Garrity, JD, MPH, MBA, Director, Office of Research Integrity (ORI), 1101 Wootton Parkway, Suite 240, Rockville, MD 20852. Some commonly asked questions and answers will be posted on the ORI website prior to the effective date of the final rule. The URL for the ORI website is <https://ori.hhs.gov>.

FOR FURTHER INFORMATION CONTACT: Justina Lawrence, (240) 453-8200.

SUPPLEMENTARY INFORMATION:**I. Background**

The Office of Research Integrity (ORI) within the Department of Health and Human Services (HHS) oversees and directs Public Health Service (PHS) research integrity activities on behalf of the HHS Secretary, with the exception of the regulatory research integrity activities of the Food and Drug Administration.

ORI was established in 1993 by amendment to section 493 of the Public Health Service Act (42 U.S.C. 289b). The HHS Secretary has authority under section 493 to promulgate a regulation that provides an administrative process for entities that apply for or receive PHS funding for biomedical or behavioral research to respond to research misconduct allegations in connection with such research and to provide assurances to the Department that the entities have an administrative process

in place to respond to research misconduct allegations, investigate research misconduct allegations, and comply with the Department's regulation. Section 493 also authorizes the HHS Secretary to promulgate a regulation addressing ORI's actions, including appropriate remedies, with respect to research misconduct.

In 2005, HHS updated regulations implementing section 493 that predated ORI's establishment. Specifically, HHS removed 42 Code of Federal Regulations (CFR) part 50, subpart A and added 42 CFR part 93, Public Health Service Policies on Research Misconduct. Since 2005, ORI and regulated entities experienced policy developments and technological changes applicable to research misconduct, such as the 2008 NIH Public Access policy; the 2023 NIH Data Management and Sharing policy; the shift to saving data on the cloud; and the ability to use artificial intelligence to detect image falsification, among many other developments.

Therefore, ORI decided to revise part 93.

On October 6, 2023, ORI issued a Notice of Proposed Rulemaking (NPRM) that proposed revisions to 42 CFR part 93 based on the experience ORI and institutions gained with the regulation since it was promulgated in 2005 (88 FR 69583). In addition, the NPRM was issued in response to increasing public concerns about research integrity in science and institutional questions about research misconduct review proceedings. The NPRM proposed several changes to provide clarity, transparency, and a better streamlined process.

The NPRM proposed changes to subpart A. These changes included requiring grant recipients to take responsibility for the research integrity assurances of their subrecipients; adding ORI oversight of and increasing reporting requirements for subsequent use exception determinations; reducing disclosure limitations; and expanding institutional reporting obligations.

Proposed changes to subpart B in the NPRM included adding or revising definitions of commonly used terms such as institutional record, administrative record, honest error, intentionally, knowingly, recklessly, and accepted practices of the relevant research community.

Proposed changes to subpart C in the NPRM included clarification for maintaining active institutional research integrity assurances and addressing apparent or actual conflicts of interest. The NPRM also proposed changes to the institutional research misconduct review process, including assessments, sequestration of research records,

inquiries, investigations, and the maintenance of institutional records.

Proposed changes to subpart D in the NPRM included clarification of institutional assembly of administrative records and potential ORI actions for institutional noncompliance. In addition, ORI proposed clarifying that the lack of an ORI finding of research misconduct does not overturn an institution's determination of research misconduct. Other proposed changes to subpart D included when and how ORI may disclose information about a research misconduct proceeding.

Proposed changes to subpart E in the NPRM included a streamlined process for contesting ORI findings of research misconduct and HHS administrative actions. The proposed appeals process included Administrative Law Judge (ALJ) review of an administrative record, rather than a *de novo* review of evidence presented at a hearing before an ALJ.

The NPRM sought comments from individuals, institutional officials, organizations, institutions, research funding agencies, and other members of the public on the proposed revisions and how to improve the clarity of the existing regulation.

II. Overview of Comments and Significant Changes in Final Rule

ORI received 269 comments via *Regulations.gov*. ORI also received comments as part of its interagency review process. ORI received 199 relevant comments representing the views of two main constituent groups: institutions and individuals. In several instances, duplicative comments were posted by the same institution or individual. ORI received 171 unique comments submitted by 123 institutions and 46 individuals. In two cases, an institution submitted two separate sets of comments; since the content of each submission was distinct, ORI counted each submission as a unique comment. In addition, some comments were endorsed by multiple individuals or institutions. For example, one institutional comment was explicitly supported by 70 separate commenters. Another institutional comment was explicitly supported by 83 separate commenters. Ten commenters supported an additional institutional statement, and three commenters supported other representative groups' statements.

Most comments addressed multiple sections of the proposed rule. Many commenters made general statements supporting the more efficient execution and oversight of research misconduct proceedings proposed in the NPRM;

however, most commenters recommended changes to enhance the clarity of the proposed regulation. These comments generally involved maintaining the balance between ensuring a complete review of misconduct allegations and protecting the rights of respondents and recognizing the potential for administrative burden and cost on institutions.

Most commenters anticipated administrative burden resulting from various parts of the NPRM. These comments were divided among five topics: burden related to the assessment phase, burden related to determining honest error, burden related to transcribing interviews, burden related to reporting, and burdens placed on small institutions. Several commenters requested more time to implement the final rule, and the amount of time requested varied widely. A majority requested one year, while others requested different timelines.

Many commenters recommended revisions to or removal of proposed definitions. Commenters also made general comments on the proposed rule, with most commenters recommending additions, revisions, or removal of various sections.

Commenters expressed a variety of concerns about potential conflicts of interest but did not recommend the removal or revision of any particular section of the proposed regulation. Commenters also expressed concerns about harm to respondents' reputation; these concerns included ORI's access to assessment reports and potential breaches of confidentiality when sharing transcripts. Commenters also expressed concerns about the effects of the proposed regulation on whistleblowers. These concerns included fears of retaliation, negative effects on reporting misconduct, and breaches of confidentiality.

The NPRM proposed several substantive changes in which commenters provided feedback that informed the drafting of the final rule. The following paragraphs provide an overview of the feedback received from commenters. More detailed descriptions of comments on specific sections of the proposed regulation are addressed below in section III.

Subpart A Summary of Significant Public Comments and Changes

Proposed § 93.102(a) would require primary PHS grant recipients to take responsibility for the compliance of their subrecipients. A number of commenters recommended removing the proposed requirement making each

PHS funding recipient responsible for the compliance of their subrecipients, because institutional responsibility for regulatory compliance was not clarified. ORI did not intend to impose a new burden on prime funding recipients; in the final rule subrecipients are required to have their own assurances filed with ORI. Proposed § 93.105(b), which involved time limitations for research misconduct proceedings, required more reporting requirements and established that ORI makes the final determination of when a subsequent use exception can be applied. Commenters recommended revising this section to state that institutions should be afforded discretion in applying the subsequent use exceptions. ORI agreed institutions should be able to determine whether the subsequent use exception applies to a given situation. Proposed § 93.106 would require increased institutional reporting obligations to ORI related to institutional confidentiality obligations. Commenters found the language of the proposed regulation in this section overcomplicated institutional confidentiality obligations, added problematic provisions, and contained information more appropriate for guidance. ORI recognized institutions' concerns about implementing the confidentiality requirements in the proposed rule and changed the final rule to provide latitude for institutions to decide confidentiality requirements for themselves. A number of commenters disapproved omitting the 2005 regulation's Evidentiary Standards section from the NPRM, and asked ORI to maintain the burden of proof language from the 2005 regulation. ORI had proposed removing this section because evidentiary standards were discussed in several other parts of the NPRM; however, ORI concurred with commenters, restored and updated aspects of the Evidentiary Standards section, and revised the final rule to clarify specific situations in which an adverse inference can be made but did not address all situations in which an adverse inference can be made. Nothing in the final rule precludes an institution or HHS from drawing an adverse inference under a different set of facts if appropriate.

Subpart B Summary of Significant Public Comments and Changes

Proposed Secs. 93.205, 93.211, 93.217, 93.236 and 93.245 set forth definitions for Appeal, Difference of Opinion, Honest Error, Research Integrity, Suspension and Debarment to provide definitions of commonly used terms. Several commenters recommended removing these

definitions because they did not enhance the clarity of the regulation. ORI agreed and removed these definitions. Proposed Secs. 93.223, 93.217, and 93.234, which set forth definitions for Institutional Record, Recklessly, and Small Institution, were also added to provide definitions for commonly used terms. Commenters recommended revisions to clarify these definitions. ORI concurred and revised these definitions, described in detail in the next section.

Subpart C Summary of Significant Public Comments and Changes

Proposed § 93.304 regarding institutional policies and procedures removed a provision that was in the 2005 regulation requiring institutions to have policies and procedures in place to protect the rights of respondents. Commenters were concerned about protecting these rights and ORI restored the language from the 2005 regulation that institutions provide for all reasonable and practical efforts, if requested and as appropriate, to protect or restore the reputation of persons alleged to have engaged in research misconduct but against whom no finding of research misconduct is made.

Proposed § 93.305 was meant to provide details on institutional responsibilities in the general conduct of misconduct proceedings. Some commenters appreciated the provision that permits an institution to add respondents to an ongoing misconduct case without conducting a separate inquiry for each new respondent. Other commenters were concerned that listing the types of researchers the institutions should consider as potential respondents created a confusing standard and could be detrimental to those individuals. ORI concurred and removed the list of potential co-respondents as well as the parenthetical list of additional research records to examine, because these lists were intended to be exemplary rather than prescriptive. Some commenters found the section on pursuing leads overly prescriptive, while others found it overly broad. Many commenters were concerned that pursuing all leads during an inquiry would be burdensome and costly—as well as cause reputational harm to innocent researchers. ORI concurred and moved the requirement to pursue all leads to § 93.310(j), which details the investigation requirements.

Commenters also objected to the proposed requirement to transcribe all interviews in § 93.305 of the NPRM, especially interviews conducted during the assessment or inquiry phase, because it could discourage reporting of

allegations and contribute to institutional burden. ORI concurred, revised the section, and moved it to § 93.310(g), which details the investigation requirements. The revised section removes the requirement for transcribed interviews during the assessment and inquiry phases. Some commenters noted this section may not provide fair procedures to respondents. Other commenters recommended removing the section entirely, stating that institutions should be allowed to institute best practices without regulatory oversight. A few commenters favored retaining the section as proposed. ORI removed all portions of the proposed subsection that did not specify requirements—that is, sections on the institution's choice to use a committee, consortium, or person to conduct, support, or participate in proceedings; what a consortium might be comprised of; and the institution's choice to allow respondents/complainants to object to committee or consortium member(s). The information was intended to be exemplary, not prescriptive. ORI intends to issue guidance on this topic.

Proposed § 93.306, which describes the institutional assessment of research misconduct allegations, increased reporting requirements, and time limitations were added to ensure prompt institutional response in addressing allegations of misconduct. Commenters were concerned about the burden of increased pre-investigation reporting requirements. ORI concurred and revised this section to simplify the assessment phase and require institutions to document their assessment process rather than write a formal report. The final rule clarifies that, if an institution determines to close a research misconduct proceeding after the assessment, it must retain documentation of its rationale sufficient to permit a later review by ORI.

Proposed § 93.307, which involves the institutional inquiry, increased reporting requirements, and time limitations were added to ensure prompt institutional response in addressing allegations of misconduct. The NPRM proposed to prohibit an institution from determining honest error during the inquiry stage. Some commenters requested clarification because the process for notifying additional respondents of an institutional inquiry appeared unclear. ORI concurred and revised this section to simplify the language. Commenters also recommended removing proposed § 93.307(f)(2) because they conveyed the requirement that institutions determine honest error only at the investigation

stage would unfairly burden both respondents and institutions. ORI agreed and removed § 93.307(f)(2). Several commenters recommended removing proposed § 93.307(h), which set a 60-day timeframe for completing an inquiry, stating that institutions should have more flexibility in the timeframe to thoroughly conduct an inquiry. ORI concurred and lengthened the inquiry timeline from 60 to 90 days. If the inquiry takes longer than 90 days to complete, the inquiry report must document the reasons for exceeding the 90-day period.

The institutional investigation phase described in proposed § 93.310 was meant to provide additional institutional responsibilities in the conduct of an institutional investigation of research misconduct, including additional reporting and proposed rules about sequestration of evidence, multiple respondents, and multiple institutions. A few commenters recommended removal of proposed § 93.310(c)(2) because they conveyed their concern that the regulation infringes on the rights of respondents who are added to an ongoing investigation without an additional inquiry. ORI clarified § 93.310(c)(2) that when a new respondent is added to an ongoing proceeding, institutions may but are not required to conduct a separate inquiry for additional respondents, and additional respondents must be notified of allegation(s) and provided an opportunity to respond.

Proposed § 93.313(k) and (l)(2) describing the institutional investigation report was meant to clarify the requirements for an investigation report. The section included lists of examples of sequestered materials. The section also included a prohibition against split decisions by an investigation committee. Commenters recommended removing proposed § 93.313(k), which included a requirement that institutions identify any research records and other evidence obtained and sequestered but not reviewed, because it was deemed resource-intensive and an unnecessary burden. ORI concurred and removed § 93.313(k) as duplicative of 93.313(e). ORI notes that the inventory requirement described in 93.313(e) does not require identification of specific files or emails but allows for a broader summary of the types of files or emails sequestered. Commenters also recommended removing language in proposed § 93.313(l)(2) prohibiting investigation committees from making a split decision. ORI removed that prohibition and included language that the report must clearly state the

investigation committee's conclusions regarding whether research misconduct occurred.

The institutional appeals process described in proposed § 93.314 would require that institutional appeals be completed within 120 days or apply for an extension. Commenters recommended deleting or significantly revising § 93.314, contending the institutional appeal was within the institution's purview, not ORI's. ORI concurred and removed most of the requirements in § 93.314 and added § 93.315 to acknowledge institutional purview. ORI recognizes the potential inefficiency of starting oversight review while an institutional appeal is ongoing that could reverse or modify the institutional findings of research misconduct. The final rule clarifies that institutions should not transmit their institutional record until the conclusion of any institutional appeals. If an appeal is filed after the institution has transmitted the institutional record, the institution must promptly notify ORI so the agency can postpone oversight review until the institutional appeal is complete.

Subpart D Summary of Significant Public Comments and Changes

Proposed § 93.410(b) would allow ORI to publish notice of institutional research misconduct proceedings that did not result in ORI findings. Many commenters urged ORI to remove § 93.410(b), which proposed that ORI may publish notice of institutional investigations and actions. Commenters cited regulatory overreach, breaches of confidentiality, and inconsistency with other agencies' policies. ORI removed 93.410(b) from the final rule, ensuring institutions have discretion in this area. Proposed § 93.411 would require HHS to provide notification and publish final HHS actions that result in a finding of research misconduct. One commenter objected to replacing "may" with "shall," regarding ORI's publication of findings and settlements. ORI restored the 2005 regulatory language of "may" to retain flexibility.

Subpart E Summary of Significant Public Comments and Changes

Proposed § 93.512 provided for a simpler and more expedient appeals process, which would entail ALJ review of an administrative record to determine whether ORI's findings and HHS's proposed administrative actions (other than suspension or debarment) are reasonable and not based on a material error of law or fact. The proposed appeals process also provided for the possibility of a limited hearing if the

ALJ determines that there is a genuine dispute over material fact. One commenter, in response to the NPRM's request for comments on the scope of and need for limited hearings, suggested the research misconduct process allows for sufficient procedures to make such limited hearings unnecessary. ORI agreed, removed proposed § 93.512 from the final rule, made clarifying edits throughout subpart E, including removing language concerning suspension and debarment and adding the qualifiers "proposed" or "HHS" before the phrase "administrative actions."

ORI made other changes in the final rule to generally provide clarity requested by the commenters. In addition to specific changes discussed below, ORI changed "will" to "may" in places throughout the final rule, as appropriate, to add flexibility. ORI made nonsubstantive edits throughout the final rule in accordance with the Plain Writing Act of 2010. ORI also merged or separated content within sections of the final rule to improve clarity and readability. ORI streamlined language to avoid repeatedly distinguishing research misconduct proceedings subject to part 93 from suspension and debarment actions governed by regulations separate and distinct from part 93. These changes either were nonsubstantive or increased the flexibility accorded to regulated entities.

III. Section-by-Section Description of Changes in the Final Rule

A. Application of Effective Date to Research Misconduct Proceedings, Final Rule § 93.75

Commenters suggested delaying the effective date of the final rule, citing the time required for institutions to update their policies and procedures and train staff, with many commenters recommending an effective date 18 months after the publication date. ORI retained the proposed effective date of January 1, 2025, but clarified that all regulatory requirements are applicable on or after January 1, 2026, in order to provide ample time for institutions to prepare for the final rule. ORI will not require institutions to implement and submit revised policies and procedures that comply with the final rule until the submission of their annual report covering 2025, which is due on or before April 30, 2026. ORI believes that this approach balances the need to promptly implement improvements made by the final rule with the time for institutions to update their policies and procedures. ORI added § 93.75 to clarify the applicability date, specifying that

beginning on January 1, 2026, an institution must follow the final rule for allegations received by the institution on or after January 1, 2026. For allegations received by an institution before January 1, 2026, an institution must follow 42 CFR part 93 as published in the 2005 edition of the Code of Federal Regulations, unless the respondent and institution both elect in writing to follow the new final rule.

B. Applicability, NPRM § 93.102(a)

A number of commenters recommended removing the proposed requirement making each PHS funding recipient responsible for the compliance of their subrecipients, because institutional responsibility for regulatory compliance was not clarified. A few commenters recommended revision for the same reason, adding that subrecipients should have assurances on file with ORI to ensure compliance by all recipients of PHS funding. ORI removed the sentence, "Further, each recipient of such support is responsible for the compliance of their subrecipients with this part," because ORI did not intend to impose a new burden on prime funding recipients; subrecipients are required to have their own assurances filed with ORI.

C. Applicability, NPRM § 93.102(d)

Revisions clarify that suspension and debarment at HHS are governed by regulations separate and distinct from part 93. As noted above, corresponding revisions throughout the final rule streamline language because there is no need to repeatedly distinguish research misconduct proceedings subject to this part from suspension and debarment actions subject to separate and distinct regulations. ORI also revised the language in this section to confirm that the Suspension and Debarment Official (SDO) and ORI may coordinate actions to the extent consistent with the SDO's and ORI's respective authorities. Such coordination includes jointly issuing notices or seeking settlements of actions and proceedings.

D. Research Misconduct, NPRM Secs. 93.103

Commenters recommended deleting this section, because it duplicated information found elsewhere, specifically the definitions of fabrication, falsification, and plagiarism. ORI concurred and deleted this section in its entirety.

E. Requirements for Findings of Research Misconduct, NPRM Secs. 93.104(a), (b), and (c)

Commenters expressed appreciation that the proposed regulation clarified the three requirements for findings of research misconduct and confirmed three elements must be met. ORI made one change for grammatical consistency across all subsections.

F. Time Limitations, NPRM § 93.105(b)

Commenters recommended revising this section to state that institutions should be allowed to determine their own timeframe for applying subsequent use exceptions. ORI agreed institutions should be able to determine whether the subsequent use exception applies to a given case. To have a consistent regulatory standard across all institutions, ORI retained the six-year limitation. Commenters also expressed concern about the potential cost and burdens of the proposed requirement that institutions inform ORI of the relevant facts before concluding the subsequent use exception does not apply. ORI concurred and revised the section to require institutions to document how they determined the exception did or did not apply and to retain that information in the institutional record. ORI may address the application of the subsequent use exception for institutional reporting requirements through future policymaking.

G. Confidentiality, NPRM § 93.106

In response to commenters mentioning circumstances in which institutions may have a legitimate need to inform persons outside the institution about a pending research misconduct proceeding, ORI clarified that institutions may alert journal editors and others who need to know of potentially inaccurate data in a timely manner, and the final rule specifies that institutions are not prohibited from managing published data or acknowledging that data may be unreliable. In addition, to prevent some institutions from keeping research-related information confidential longer than necessary, the final rule now clarifies the length of time an institution is bound by the confidentiality provision. Commenters also stated that the language proposed in this section overcomplicated institutional confidentiality obligations and contained information more appropriate for guidance. ORI recognized institutions' concerns about overly prescriptive language and changed the final rule to provide greater latitude for

institutions to decide how to meet confidentiality requirements. ORI also removed the subsections that discussed what constitutes “those who need to know.”

H. Appeal, NPRM § 93.204

Commenters recommended deleting this definition because it was unnecessary. ORI concurred and removed this definition.

I. Charge Letter, NPRM § 93.206

ORI removed specific language addressing joint charge letters, because § 93.102(d) of the final rule addresses situations in which ORI and the SDO may jointly issue notices. ORI also revised proposed § 93.206 to remove references to the SDO in the definition and avoid redundancy in subpart A.

J. Difference of Opinion, NPRM § 93.211

Several commenters recommended removing this definition because it did not enhance the clarity of the regulation. ORI agreed and removed this definition.

K. Honest Error, NPRM § 93.217

Several commenters requested revision of this definition of honest error. A minority of commenters asked ORI to add a reference to good faith and intent and to provide examples. Most commenters recommended removing the definition because they conveyed that it was unnecessary. ORI concurred and removed this definition.

L. Institutional Record, NPRM § 93.223

Commenters generally supported including this definition but expressed concerns about the institutional burden of sequestering irrelevant records and conveyed that the institutional investigation committee should have autonomy to decide which records to consider. While ORI understands sequestration imposes an institutional burden, ORI has found that records originally not considered by an institution may be relevant to the research misconduct proceeding. ORI balanced these concerns by revising the proposed definition of institutional record and retaining a maintenance requirement in § 93.318 for sequestered evidence that is not part of the institutional record. ORI revised the proposed definition to clarify that the institutional record comprises all records the institution compiled or generated during the research misconduct proceeding, except for the records the institution did not consider or rely on. The institutional record index does not need to include records the institution did not consider or rely on. ORI revised the proposed definition

to include a requirement for a general description of records sequestered but not considered or relied on. Additionally, ORI revised wording to clarify that assessments are to be documented, but an assessment report is not required. ORI intends to issue guidance on this topic.

M. Recklessly, NPRM § 93.234

Many commenters proposed revisions to this definition. Some commenters requested clarification of and distinction between the definitions of “knowingly” and “recklessly,” as well as a definition of “harm.” Several commenters requested guidance with examples to help institutions distinguish between “careless” and “reckless” supervision. One commenter approved of the existing definition. ORI revised the definition in response to these comments to make it easier to apply in the research misconduct context. In particular, ORI revised the definition to make it specific to proposing, performing, or reviewing research, or reporting research results, rather than “acting” more generally, and specific to a risk of fabrication, falsification, or plagiarism.

N. Investigation, NPRM § 93.225

Commenters proposed revising this definition to provide further clarification. ORI agreed and revised the definition by removing unnecessary language for clarity.

O. Research Integrity, NPRM § 93.236

Many commenters recommended removing this definition because they found it narrow, unclear, and inconsistent with the National Academies of Sciences, Engineering, and Medicine (NASEM) definition. One commenter recommended retaining the proposed definition. ORI decided to remove this definition and may provide future guidance on this topic.

P. Research Misconduct Proceedings, NPRM § 93.239

Regarding the appeals process and involvement of an ALJ, ORI added clarifying language, “appeals under subpart E,” to avoid ambiguity and to distinguish this process from institutional appeals.

Q. Research Record, NPRM § 93.240

Commenters requested clarification of this definition. ORI added “records of” before “oral presentations” to exclude from the definition any records of completely internal presentations where problems were potentially identified and corrected before outside reporting. ORI also changed the phrase “internal

reports” to “lab meeting reports” to clarify the meaning of this phrase, which may be part of the research record. Additionally, ORI removed “internet” from “internet and online” content because of the repetitive meaning of the two words. ORI intends to issue guidance on this definition.

R. Small Institution, NPRM § 93.244

Several commenters recommended revisions to the definition because they conveyed that the criteria used to designate a small institution were overly restrictive. ORI agreed and removed the statement that a small institution typically has “a total of 10 or fewer institutional members” and may address this topic through future policymaking.

S. Suspension and Debarment, NPRM § 93.245

ORI removed this proposed definition of “suspension and debarment” and merged significant aspects of the definition with “Suspension and Debarment Official or SDO” to reduce redundancy.

T. Institutional Policies and Procedures, NPRM § 93.304

One commenter commended ORI for requiring all institutions to file an assurance to apply for PHS support. Commenters expressed concern about omitting the 2005 regulation’s requirement to make all reasonable and practical efforts to restore the reputation of respondents not found to have committed research misconduct. Commenters requested restoring proposed § 93.304 to the 2005 wording. ORI concurred and restored the 2005 wording regarding policies and procedures to protect the reputation of respondents when no finding has been made.

U. General Conduct of Research Misconduct Proceedings—Sequestration of Research Records and Other Evidence, NPRM § 93.305(a)

ORI noted the requirement to sequester all research records and other evidence was mentioned more than once in the NPRM. To reduce redundancy, this requirement is explained in full only once in the final rule, under General Conduct of Research Misconduct Proceedings.

V. General Conduct of Research Misconduct Proceedings—Multiple Respondents, NPRM § 93.305(d)

Some commenters appreciated the provision that permits an institution to add respondents to an ongoing research misconduct case without conducting a separate inquiry for each new

respondent. Others expressed the provision could set a precedent that infringes on respondents' rights. To address this concern, the final rule specifies that each additional respondent must be provided notice of the allegations and an opportunity to respond, consistent with subpart C. Some commenters were also concerned that listing the types of researchers the institutions should consider as potential respondents created a confusing standard and could be detrimental to those individuals. ORI concurred and removed the list of potential co-respondents as well as the parenthetical list of additional research records to examine, because these lists were intended to be exemplary rather than prescriptive. Some commenters suggested changing "must consider whether any additional researchers are responsible" to "may consider whether any additional researchers are responsible." ORI revised this section to allow institutions the flexibility to use their own judgment.

W. General Conduct of Research Misconduct Proceedings—Pursue Leads, NPRM § 93.305(f)

Some commenters found this section overly prescriptive while others found it overly broad. Many commenters were concerned that pursuing all leads during an inquiry would be burdensome and costly—as well as cause reputational harm to innocent researchers. ORI concurred and moved the requirement to pursue all leads to § 93.310(j), which details the investigation requirements. ORI also removed the parenthetical list of additional research records to examine, because it was intended to be exemplary, not prescriptive. ORI intends to provide further guidance specifying recommended practices for pursuing leads.

X. General Conduct of Research Misconduct Proceedings—Interviews, NPRM § 93.305(g)

Commenters objected to the proposed requirement to transcribe all interviews, especially interviews conducted during the assessment or inquiry phase, because it could discourage reporting of allegations and contribute to institutional burden. Some commenters expressed that if transcriptions are mandatory, they should be required only during the investigation. ORI concurred, revised the proposed section, and moved it to § 93.310(g), which details the investigation requirements. The revised section removes the requirement for transcribed interviews during the assessment and inquiry phases.

Y. Conduct of Research Misconduct Proceedings—Using a Committee, Consortium, or Other Person for Research Misconduct Proceedings, NPRM § 93.305(h)

Some commenters noted a concern that this section may not provide fair procedures to respondents. Other commenters recommended removing the section entirely, stating that institutions should be allowed to institute best practices without regulatory oversight. A few commenters favored retaining the section as proposed. ORI removed all portions of the proposed subsection that did not specify requirements—that is, sections on the institution's choice to use a committee, consortium, or person to conduct, support, or participate in proceedings; what a consortium might be comprised of; and the institution's choice to allow respondents/complainants to object to committee or consortium member(s). The information was intended to be exemplary, not prescriptive.

Z. Institutional Assessment, NPRM § 93.306

A number of commenters were concerned about the burden of increased pre-investigation reporting requirements. ORI concurred and revised this section to simplify the assessment phase and require institutions to document their assessment process rather than write a formal report. Commenters also expressed concern about potential harm to respondents' reputations if ORI is permitted to read an institution's assessment documentation. In response to the concern about reputational harm, ORI notes that any assessment documentation obtained by ORI will be subject to the Privacy Act, 5 U.S.C. 552a. Many commenters asked ORI to remove § 93.306(e), which proposed requiring institutions to complete the assessment within 30 days. Commenters expressed that this timeline was unrealistic, would be burdensome for institutions, and could undermine the rigor and utility of the sequestration process. One commenter was concerned about the impact of this assessment timeframe on respondents' mental health. ORI concurred and removed the 30-day assessment timeline requirement.

AA. Institutional Inquiry, NPRM § 93.307

Some commenters requested clarification because the process for notifying additional respondents of an institutional inquiry appeared unclear.

ORI concurred and revised this section to simplify the language. Commenters also recommended removing proposed § 93.307(f)(2) because they conveyed that the requirement that institutions determine honest error only at the investigation stage would unfairly burden both respondents and institutions. ORI agreed and removed proposed § 93.307(f)(2). Several commenters recommended removing proposed § 93.307(h), which set a 60-day timeframe for completing an inquiry, stating that institutions should have more flexibility in the timeframe to thoroughly conduct an inquiry. ORI concurred and lengthened the inquiry timeline from 60 to 90 days. If the inquiry takes longer than 90 days to complete, the inquiry report must document the reasons for exceeding the 90-day period. ORI also revised references to "research records" throughout the final rule to ensure consistency with § 93.307(d), which describes "research records and other evidence." In addition, ORI removed proposed § 93.307(e)(5) in the final rule to eliminate redundancy, because § 93.310(j) specifically addresses the institutional responsibility to pursue all leads.

BB. Reporting to ORI on the Decision To Initiate an Investigation, NPRM § 93.309

ORI removed the proposed requirement that the Institutional Deciding Official review the inquiry report and provide a written decision to proceed to an investigation, to eliminate potential administrative burden.

CC. Institutional Investigation, NPRM § 93.310

A few commenters recommended removal of § 93.310(c)(2) because they expressed a concern that the regulation infringes on the rights of respondents who are added to an ongoing investigation without an additional inquiry. ORI clarified in § 93.310(c)(2) that when a new respondent is added to an ongoing proceeding, institutions may but are not required to conduct a separate inquiry for additional respondents, and additional respondents must be notified of allegation(s) and provided an opportunity to respond consistent with subpart C. In response to commenters requesting additional clarity for regulated entities, ORI moved proposed § 93.310(h) regarding the institutional responsibility to pursue leads to § 93.310(j) and streamlined the language, including clarifying the respondent notification requirement.

DD. Investigation Report, NPRM § 93.313(k)

Commenters requested clarity on how the investigation report should identify sequestered evidence. Commenters also recommended removing § 93.313(k), which included a requirement that institutions identify any research records and other evidence obtained and sequestered but not reviewed, because it was deemed resource-intensive and an unnecessary burden. ORI revised § 93.313 to replace proposed Secs. 93.313(e) and (k) with a single requirement in § 93.313(e) to include in the investigation report an inventory of sequestered research records and other evidence, except records the institution did not consider or rely on. ORI made a corresponding revision to § 93.220(c) of the final rule requiring that the institutional record include a general description of the records that were sequestered but not considered or relied on. ORI notes that the general description in § 93.220(c) does not require identification of specific files or emails but allows for a broader summary of the types of files or emails sequestered.

EE. Investigation Report, NPRM § 93.313(l)(2)

Commenters recommended removing language in proposed § 93.313(l)(2) prohibiting investigation committees from making a split decision. ORI removed that prohibition and included language that the report must clearly state the investigation committee's conclusions regarding whether research misconduct occurred for each separate allegation.

FF. Institutional Appeals, NPRM § 93.314

Commenters recommended deleting or significantly revising proposed § 93.314, which requires institutions to complete any institutional appeals within 120 days or seek an extension, contending the institutional appeal was within the institution's purview, not ORI's. ORI concurred and removed most of the requirements in § 93.314. ORI recognizes the potential inefficiency of starting oversight review while an institutional appeal is ongoing that could reverse or modify the institutional findings of research misconduct. The final rule clarifies that institutions should not transmit their institutional record until the conclusion of any institutional appeals. If an appeal is filed after the institution has transmitted the institutional record, the institution must promptly notify ORI so the agency

can postpone oversight review until the institutional appeal is complete.

GG. Decision by the Institutional Deciding Official, Final Rule § 93.314

ORI added this section to clearly identify the responsibilities of the Institutional Deciding Official at the conclusion of an investigation and to respond to commenters generally requesting additional clarity.

HH. Completing the Research Misconduct Process, NPRM § 93.316(a)

ORI revised the requirement that institutions notify ORI in advance if an institution plans to close research misconduct proceedings to omit "or for any other reason" to eliminate unnecessary burden.

II. Institutional Standards of Conduct, NPRM § 93.318

This section was intended to indicate that ORI findings of research misconduct or HHS settlements of research misconduct proceedings, or the absence thereof, do not affect institutional findings or actions taken based on an institution's standards of conduct. ORI combined (a) and (b) of this section and clarified language accordingly.

JJ. Interaction With Other Entities and Interim Actions, NPRM § 93.401

ORI added language to clarify the relationship between ORI and the HHS official authorized to impose suspension and debarment.

KK. Final HHS Actions, NPRM § 93.406

ORI removed unnecessary language regarding suspension and debarment.

LL. HHS Administrative Actions, NPRM § 93.407

ORI revised this section to clarify that, for purposes of this regulation, HHS administrative actions do not include suspension and debarment. However, the HHS official authorized to impose suspension and debarment remains free to pursue those actions under applicable regulations, as stated in § 93.407(d).

MM. Mitigating and Aggravating Factors in HHS Administrative Actions, NPRM § 93.408

ORI removed unnecessary language regarding suspension and debarment.

NN. Final HHS Action With No Settlement or Finding of Research Misconduct, NPRM § 93.410(a)

ORI removed the phrase "as it deems necessary" in § 93.410(a) because it does not add further meaning to the section.

OO. Final HHS Action With No Settlement or Finding of Research Misconduct, NPRM § 93.410(b)

Many commenters urged ORI to remove § 93.410(b), which proposed that ORI publish notice of institutional investigations and actions. Commenters cited regulatory overreach, breaches of confidentiality, and inconsistency with other agencies' policies. One commenter noted that ORI's publication of institutional reports and findings would be inconsistent with the confidentiality provisions established in the clinical research context. A minority of commenters recommended revising the section to redact respondents' identifying information to ensure confidentiality. A few commenters recommended retaining the section as proposed. ORI removed proposed § 93.410(b) from the final rule, ensuring institutions have discretion in this area.

PP. Final HHS Action With a Settlement or Finding of Misconduct, NPRM § 93.411

One commenter objected to replacing "may" with "shall," regarding ORI's publication of findings and settlements. ORI restored the 2005 regulatory language of "may" to retain flexibility.

QQ. HHS Compliance Actions, NPRM § 93.413

ORI revised this section to clarify the process for making a discretionary referral to the HHS official authorized to impose suspension and debarment under separate and distinct regulations. In addition, ORI changed the section's name to "ORI compliance actions" for accuracy.

RR. Notice, NPRM § 93.414

One commenter objected to replacing "may" with "shall" regarding ORI's publication of findings and settlements. ORI restored the 2005 regulatory language of "may" to retain flexibility. Commenters were concerned this portion of the proposed regulation weakens respondents' confidentiality protections and runs counter to the remedial purpose of regulations and HHS administrative actions. One commenter requested adding language to protect the institution's confidentiality in subsection (b). Numerous commenters recommended requiring ORI to notify the relevant institution when it closes a case without a settlement or a finding of research misconduct. One commenter expressed that ORI should attempt to restore the reputation of respondents not found to have committed research misconduct; they also expressed that if a complainant is found to have conflicts

of interest with the respondent, ORI should consider taking action against the complainant. Another commenter was concerned about § 93.414(f), which provides that any publications or disclosures pursuant to this section are not considered appealable “administrative actions.” ORI revised this section for clarity and removed proposed subsections 93.414(c)–(f) in response to the comments.

SS. General Policy, NPRM § 93.500

ORI revised this section to clarify that a respondent must exhaust administrative remedies under this part prior to seeking judicial review in Federal court.

TT. Conferences, NPRM § 93.510

ORI revised this section to restore in subsection 93.510(e) the phrase “Whenever possible” from the 2005 regulation to retain flexibility for the ALJ.

UU. Hearing To Resolve Genuine Factual Dispute, NPRM § 93.511

One commenter, in response to the NPRM’s request for comments on the scope of and need for limited hearings, suggested the research misconduct process allows for sufficient procedures to make such limited hearings unnecessary. ORI agreed, removed proposed § 93.511 from the final rule, and made corresponding edits throughout subpart E.

VV. The Administrative Law Judge’s Ruling, NPRM § 93.512

To promote consistency in agency decision making, ORI reinstated and updated from the 2005 regulation an opportunity for the Assistant Secretary for Health (ASH) to review the ALJ’s decision under subpart E. Although § 93.511 in the final rule explicitly provides that the ASH may review the ALJ’s recommended decision before it becomes final, the ASH and the Secretary also have the ability to review ORI findings of research misconduct and/or proposed HHS administrative actions before a charge letter is issued under § 93.405 and to act as final decision maker before a charge letter is issued, if either of them so chooses.

IV. Significant Comments Not Resulting in Changes

A. Accepted Practices of the Relevant Research Community, NPRM § 93.200

Commenters supported retaining this proposed definition but found it overly expansive. Commenters recommended revised language, including practices specific to PHS-funded research. ORI left this definition unchanged to

acknowledge the expanding universe of research disciplines.

B. Allegation, NPRM § 93.203

Commenters supported revising this definition to clarify purposeful disclosure of possible research misconduct. After consideration, ORI left the definition as proposed, to avoid adding another element to the definition that may discourage reporting possible research misconduct.

C. Assessment, NPRM § 93.205

Many commenters recommended deleting this definition because they conveyed that it was unnecessary. Some commenters’ recommended revisions were related to concerns about the proposed description of the assessment phase in subpart C. A minority of commenters supported the inclusion of the definition but sought clarification for what constitutes readily available information. ORI made changes to subpart C and left the definition of “assessment” as proposed because there was no consensus among the comments and because it was satisfied that the proposed definition served the purpose of explaining the term to those who may be unfamiliar with the term in the research misconduct context. ORI may address this topic through future policymaking.

D. Complainant, NPRM § 93.207

Commenters recommended revising this definition to add details about complainant anonymity. ORI agreed on the importance of anonymity and addressed confidentiality elsewhere in subpart A of the final rule. ORI left the definition of complainant unchanged.

E. Contract, NPRM § 93.208

One commenter proposed removing this definition because it is a commonly understood term. ORI opted to leave the definition as proposed, because it is helpful to those who are not familiar with contracts under the Federal Acquisition Regulation.

F. Day, NPRM § 93.209

Some commenters recommended removing or revising this definition to factor in academic calendars. Since academic calendars vary, ORI retained the definition in its proposed form.

G. Departmental Appeals Board, NPRM § 93.210

One commenter recommended removing this definition because it is a commonly understood term. ORI retained the definition in its proposed form because it is helpful to those who are not familiar with that organization.

H. Evidence, NPRM § 93.212

A small number of commenters provided contradictory recommendations about removing or enhancing the definition. ORI retained the definition in its proposed form because there was no consensus among the comments and because it was satisfied that the proposed definition served the purpose of explaining the term to those who may be unfamiliar with the term in the research misconduct context.

I. Falsification, NPRM § 93.214

One commenter recommended revising this definition to include allegations of misconduct and intent. ORI retained the definition in its proposed form because it is consistent with the definition found in the 2000 Office of Science and Technology Policy’s Federal Policy on Research Misconduct, 65 FR 76260 (Dec. 6, 2000).

J. Good Faith, NPRM § 93.216

Some commenters recommended revising this definition to express nuance without fundamentally altering its meaning. ORI retained the definition in its proposed form because commenters were not opposed to the meaning expressed in the definition.

K. Institution, NPRM § 93.219

One commenter recommended revising this definition to clarify that institutions are not persons. ORI retained the definition in its proposed form. While the definition refers to “any person,” the term “person” is defined in § 93.226 of the final rule to include both individuals and other legal entities that are not individuals.

L. Institutional Deciding Official, NPRM § 93.221

Commenters recommended revising this definition to permit the Research Integrity Officer, or RIO, to serve as the Institutional Deciding Official. ORI retained the definition in its proposed form, because requiring a different individual to serve in each role will better ensure a fair and unbiased outcome.

M. Institutional Member, NPRM § 93.222

Commenters recommended revising the definition to remove the inclusion of subcontractors and subrecipients. ORI retained the definition in its proposed form and clarified related wording under “Applicability” in subpart A, because an individual’s duty to protect PHS funds from misuse should not depend on the individual’s employment status with a specific institution.

N. Intentionally, NPRM § 93.224

Commenters suggested revising this definition to provide further clarification. One commenter also suggested better harmonization with definitions used by other Federal agencies. ORI retained the definition in its proposed form to avoid including additional terms that could introduce ambiguity. ORI intends to explore opportunities to harmonize policy across Federal entities.

O. Knowingly, NPRM § 93.226

Many commenters generally supported retaining this proposed definition; however, several commenters requested clarification on distinctions among “knowingly,” “recklessly,” and “intentionally.” ORI retained the definition in its proposed form to avoid including additional terms that could introduce ambiguity.

P. Notice, NPRM § 93.227

One commenter recommended removing this definition. Another commenter recommended revision to remove the word “serve.” ORI retained the definition because it describes an essential part of the process of notifying respondents. ORI retained the word “serve” for clarity and notes that the definition does not require the use of a process server.

Q. Office of Research Integrity or ORI, NPRM § 93.228

One commenter recommended removing this definition because it is a commonly understood term. ORI retained the definition in its proposed form because it is helpful to the public.

R. Plagiarism, NPRM § 93.230

Commenters recommended revising this definition, particularly to clarify “self-plagiarism.” ORI retained the definition in its proposed form. Because “plagiarism” is defined as the appropriation of “another person’s” ideas, processes, results, or words, without giving appropriate credit, the exclusion of a “self-plagiarism” definition was intended to confirm that the appropriation must be of “another person’s” rather than one’s own ideas, processes, results, or words. Thus, ORI does not believe it necessary to further define “self-plagiarism” in its regulation, but ORI may address this topic through future policymaking.

S. Preponderance of Evidence, NPRM § 93.231

One commenter supported the inclusion of the definition. Another commenter recommended revision to clarify the definition. ORI retained the

definition because there was no consensus among the comments and because it was satisfied that the proposed definition served the purpose of explaining the term to those who may be unfamiliar with the term in the research misconduct context.

T. Research Integrity Officer or RIO, NPRM § 93.237

Several commenters provided feedback on this definition. Many commenters supported the inclusion of this definition. A minority of commenters recommended its removal because they conveyed that it was unnecessary or confusing. ORI retained the definition in its proposed form because it is helpful to the public and clarifies the specific responsibilities of this role.

U. Research Misconduct, NPRM § 93.238

Commenters recommended revision of the definition to include questionable research practices. One commenter conveyed that the definition was unnecessary. One commenter requested retention of the proposed definition. ORI decided to retain this definition because it is consistent with the definition found in the 2000 Office of Science and Technology Policy’s Federal Policy on Research Misconduct, 65 FR 76260 (Dec. 6, 2000).

V. Retaliation, NPRM § 93.242

Commenters recommended revision of this definition to make it more expansive. ORI retained the definition in its proposed form as a more limited definition is needed to accommodate HHS components that address retaliation in other contexts.

W. General Responsibilities for Compliance, NPRM § 93.300(g)

Commenters proposed removing the portion of § 93.300(g) that requires institutions to address deficiencies or additional allegations, noting that ORI already has a broad mandate to ensure compliance. One commenter asked ORI to add a requirement that institutions take precautions to ensure that complainants do not have unresolved conflicts of interest with the respondent. Some commenters recommended retaining the section as proposed. Commenters also requested more guidance on fostering an environment of research integrity and developing and evaluating effective training programs; one commenter offered suggestions about how to improve Responsible Conduct of Research training. ORI acknowledges the compliance process can be complex. ORI left this section

unchanged because providing guidance rather than stipulating additional regulatory requirements reduces institutional burden. ORI intends to issue further guidance on these topics.

X. Research Integrity Assurances, NPRM § 93.301

One commenter noted changing the title of this section from “Institutional Assurances” to “Research Integrity Assurances” was confusing and could be misread as materially altering the nature of institutional assurances. One commenter expressed it was inappropriate to require the person who coordinates an institution’s compliance assurances and Responsible Conduct of Research program to also be responsible for fostering an environment that supports research integrity, because that is a leadership-level responsibility. There was a request for more specific guidance on how institutions can foster research integrity, with examples focused not only on research but also the concept of “research integrity” more broadly. ORI acknowledges the compliance process can be complex. ORI left this section unchanged because providing guidance rather than stipulating additional regulatory requirements reduces institutional burden. ORI intends to issue further guidance on these topics.

Y. Maintaining Active Research Integrity Assurances, NPRM § 93.302(a)

One commenter requested greater clarity in proposed § 93.302(a)(4)(ii) on the scope of policies and procedures that institutions are required to make publicly available. ORI intends to issue guidance on this topic.

Z. General Conduct of Research Misconduct Proceedings—Sequestration of Research Records and Other Evidence, NPRM § 93.305(a)

Most commenters approved of proposed § 93.305(a) and expressed appreciation that institutions may sequester copies of records if they are substantially equivalent in evidentiary value. ORI retained the language as proposed.

AA. General Conduct of Research Misconduct Proceedings—Multiple Institutions, NPRM § 93.305(e)

Commenters appreciated ORI’s addition of this subsection because there has been an increase in complex cases involving more than one institution. However, they requested further guidance on how to handle such cases, including how to determine a lead institution. ORI intends to issue further guidance on this topic.

BB. General Conduct of Research Misconduct Proceedings—Interviews, NPRM § 93.305(g)

Some commenters suggested revising NPRM section § 93.305(g)(5) to require institutions to redact all interview transcripts before forwarding them to the respondent, to protect interviewees' identities. ORI left this section unchanged and moved it to § 93.310(g) because policies regarding interview transcriptions prior to the investigation phase should be left to the discretion of institutions.

CC. Institutional Investigation, NPRM § 93.310

Commenters recommended revising § 93.310(a) to extend the time to begin an investigation. ORI retained the proposed language because it is important to proceed promptly after an institution decides an investigation is warranted.

DD. Investigation Time Limits, NPRM § 93.311

Several commenters approved of ORI's increasing the investigation period from 120 to 180 days; however, a significant number of commenters expressed that 180 days is inadequate to conduct a thorough investigation. These commenters requested timeframes ranging up to a year or more. ORI retained the proposed 180-day timeline, because the timeframe balances the needs of institutions and the need of respondents to have investigations conclude within a reasonable amount of time, and institutions have the opportunity to request extensions. ORI will continue to work closely with institutions that request and substantiate the need for an extension.

EE. Interaction With Other Entities and Interim Actions, NPRM § 93.401(b)

Commenters recommended revising § 93.401(b) to require ORI to notify the RIO or the Institutional Deciding Official if ORI makes a determination to refer a case to the Department of Justice or other Federal agencies while the institution's research misconduct proceedings are pending. ORI retained the language of this section because such referrals are nonpublic.

FF. ORI Allegation Assessments, NPRM § 93.402

One commenter was concerned about the removal of language that was in the 2005 regulation specifying the requirements for ORI to conduct an assessment. ORI did not restore the language because it is redundant with § 93.204 of the final rule.

GG. Final HHS Action With No Settlement or Finding of Research Misconduct, NPRM § 93.410(b)

One commenter stated that the institutional investigation report is part of a PHS-supported research process and should be made public; they suggested copies of or links to all institutional investigation reports should be posted on the ORI website. ORI retained the language as proposed because the institutional investigation report is not a public document and is protected by the Privacy Act, 5 U.S.C. 552a.

HH. Rights of the Parties, NPRM § 93.505

One commenter suggested that discovery and *de novo* review are not needed; all that should be required is consideration of all the evidence available to the ALJ, including the institutional record and additional testimony and other evidence provided during the appeal. ORI did not make further changes because ORI already proposed removing the discovery and *de novo* review provisions in the NPRM.

V. Effective Date

The final rule will become effective January 1, 2025, and all regulatory requirements will be applicable on January 1, 2026, which will apply prospectively. The effect of the prospective application to research misconduct proceedings will depend on when allegations are received by institutions. The final rule applies to research misconduct proceedings based on allegations received by institutions on or after January 1, 2026. For allegations received by an institution prior to January 1, 2026, an institution must follow 42 CFR part 93 as published in the 2005 edition of the Code of Federal Regulations, unless a respondent and institution agree in writing to apply the final rule to a particular research misconduct proceeding. Institutions must implement and submit revised policies and procedures that comply with the final rule along with their annual report covering 2025, which must be received by ORI on or before April 30, 2026.

VI. Required Regulatory Analyses

We examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and the Congressional Review Act (5 U.S.C. 801–808).

Executive Orders 12866, 13563, and 14094 direct us to assess all benefits,

costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). A “significant regulatory action” under Executive Order 12866 Section 3(f)(1) (as amended by Executive Order 14094) includes a “regulatory action likely to result in a rule that may have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of [the Office of Information and Regulatory Affairs (OIRA)]) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.” The analysis below concludes that this final rule is not a significant regulatory action under Executive Order 12866 Section 3(f)(1). OIRA has determined that this final rule is a significant regulatory action, but that it does not meet the criteria set forth in 5 U.S.C. 804(2) under the Congressional Review Act.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small institutions. The analysis below concludes that the final rule will not have a significant economic impact on a substantial number of small institutions.

The Unfunded Mandates Reform Act of 1995 (UMRA) generally requires that each agency conduct a cost-benefit analysis, identify and consider a reasonable number of regulatory alternatives, and select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule before promulgating any proposed or final rule that includes a Federal mandate that may result in expenditures of more than \$100 million (adjusted for inflation) in at least one year by State, local, and tribal governments, or by the private sector. Each agency must also seek input from State, local, and tribal governments. The current threshold after adjustment for inflation using the Implicit Price Deflator for the Gross Domestic Product is \$183 million, reported in 2023 dollars. Per the analysis below, this final rule will not result in an unfunded mandate in any year that meets or exceeds this amount.

Baseline and Summary of Impacts

Under the current regulatory requirements, all recipients of PHS

support for biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or research training must comply with certain reporting and record keeping requirements. However, since many of these impacts have not been comprehensively quantified and monetized in a previously published regulatory impact analysis, when considering the potential impacts of this final rule, we adopt an analytic baseline that excludes many ongoing activities associated with the existing requirements. For example, absent any further regulatory action, we anticipate that covered entities would continue to incur costs (inclusive of the opportunity costs of staff time and other resources) associated with filing an annual statement of assurance (research integrity assurance) and an annual report on allegations received; costs associated with submitting reports and evidence to support their results and conclusions of inquiries or investigations of research misconduct; and costs associated with obtaining all research records and other evidence when there is an allegation of research misconduct and engaging persons to handle the process for addressing the allegations of research misconduct.

We anticipate that the final rule will likely reduce the burden of compliance by institutions through reduced confusion and uncertainty. Thus, the benefits of this final rule stem from reduced confusion for research institutions to understand the requirements that apply to them. This final rule will reduce the potential for lengthy back-and-forth discussions between ORI and institutions to ensure that institutions conduct complete and fair investigations of allegations of research misconduct. It will also streamline the process for respondents to appeal ORI findings of research misconduct and proposed HHS administrative actions. We anticipate that these revisions will reduce the burden across the affected research community. This final rule will also help foster an environment of responsible conduct of research.

We anticipate that this final rule will likely result in one-time costs associated with covered institutions updating their policies and procedures for responding to allegations of research misconduct. For institutions that undertake proceedings to address allegations of research misconduct, we identify and monetize additional recurring costs associated with documenting aspects of those proceedings. We quantify and monetize these costs in the next section.

One-Time Costs Associated With Updating Policies and Procedures

In support of the NPRM, we performed an initial threshold analysis to assess the approximate magnitude of the impacts of the proposed rule to determine whether it would result in a significant regulatory action per section 3(f)(1) of Executive Order 12866. We identified the potential costs associated with covered institutions updating their policies and procedures for responding to allegations of research misconduct as the largest impact under the proposed rule. To quantify this impact, we adopted a count of 5,910 institutions holding research integrity assurances that would update their policies and procedures. For the purposes of the initial threshold analysis, we adopted 16 hours as an estimate for the average time across all covered entities for these tasks. Across all covered entities, this was 94,560 total hours spent updating policies and procedures.

To monetize the change in time use associated with these activities, we adopted an hourly value of time based on the cost of labor, including wages and benefits, and also indirect costs, which “reflect resources necessary for the administrative oversight of employees and generally include time spent on administrative personnel issues (e.g., human resources activities such as hiring, performance reviews, personnel transfers, affirmative action programs), writing administrative guidance documents, office expenses (e.g., space rental, utilities, equipment costs), and outreach and general training (e.g., employee development).”¹

For these tasks, we identified a pre-tax hourly wage for Education Administrators, Postsecondary. According to the U.S. Bureau of Labor Statistics, the mean hourly wage for these individuals was \$53.49 per hour.² We assumed that benefits plus indirect costs equal approximately 100 percent of pre-tax wages, and adjusted this hourly rate by multiplying by two, for a fully loaded hourly wage rate of \$106.98. We multiplied this fully loaded hourly wage rate by the 94,560 total

hours across covered entities spent updating policies and procedures and estimated a total cost in the first year of about \$10.1 million.

We received public comments suggesting it will take institutions more than 16 hours to update their policies and procedures,³ with alternative estimates including between 17–26 hours, between 27–40 hours, or more than 40 hours. We appreciate these comments, and in response, we present an additional threshold analysis, following the same approach described above, but adopting several revised assumptions and updated data. This threshold analysis helps to determine whether it will result in a significant regulatory action per section 3(f)(1) of Executive Order 12866 and to determine whether any effects will exceed the UMRA threshold. For this analysis, we adopt a more recent estimate that 6,394 institutions holding research integrity assurances. Consistent with an upper-bound estimate from public comments, we adopt 40 hours as the average hours per covered entity. We updated the pre-tax hourly wage to \$55.38 per hour,⁴ for a fully loaded hourly wage rate of \$110.76. The modified assumptions indicate that, across all covered entities, 255,760 hours would be spent updating policies and procedures. Monetizing this impact using the fully loaded hourly wage rate, this would represent a cost in the first year of about \$28.3 million. Thus, our modified threshold analysis indicates that the largest economic impact of the final rule would not exceed the monetary threshold for significant regulatory actions per section 3(f)(1) of Executive Order 12866 or the UMRA threshold. We emphasize that this estimate corresponds to an upper-bound estimate of the potential impacts based on public comments to the proposed rule.

As discussed in greater detail in the Preamble, this final rule includes several revisions that generally reduce the burden on the institutions covered, compared to the proposed rule. To estimate the costs associated with covered institutions updating their policies and procedures, we adopt 16 hours as an estimate for the average time per covered entity and apply the updated fully loaded hourly wage

¹ U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. 2017. “Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices.” <https://aspe.hhs.gov/reports/valuing-time-us-department-health-human-services-regulatory-impact-analyses-conceptual-framework>. Page v. Accessed March 29, 2024.

² U.S. Bureau of Labor Statistics. Occupational Employment and Wages, May 2021. 11–9033 Education Administrators, Postsecondary. Mean hourly wage. <https://www.bls.gov/oes/current/oes119033.htm>. Accessed March 29, 2024.

³ For example, see “Comment from COGR, HHS–OASH–2023–0014, HHS–OASH–2023–0014–0001, 2023–21746.” <https://www.regulations.gov/comment/HHS-OASH-2023-0014-0074>. Accessed March 29, 2024.

⁴ U.S. Bureau of Labor Statistics. Occupational Employment and Wages, May 2022. 11–9033 Education Administrators, Postsecondary. Mean hourly wage. <https://www.bls.gov/oes/current/oes119033.htm>. Accessed March 29, 2024.

estimate (\$110.76) and covered entity count (6,394 institutions). Combining these assumptions results in an estimate of the total cost associated with updating policies and procedures in the first year of about \$11.3 million.

Recurring Costs Attributable to the Final Rule

For institutions that address allegations of research misconduct, we identify additional recurring costs associated with the final rule's reporting, recordkeeping, and third-party disclosure requirements related to institutions responding to allegations of research misconduct. To quantify these impacts, we adopt an estimate of 230 cases per year, matching the most recent annual count of cases reported to HHS.

Consistent with our estimates in the Paperwork Reduction Act section of this Preamble, we believe that institutions will spend a total of 221,030 hours per year on these requirements, which is about 961 hours per case. To monetize these impacts, we adopt the fully loaded hourly value of time of \$110.76 per hour for postsecondary education administrators. Across all 230 cases, we compute an annual cost associated with these regulatory requirements of \$24,481,283 per year. The Paperwork Reduction Act section of this Preamble contains additional details on the annual burden estimates and total costs associated with each of these requirements.

Summary and Timing of Costs of the Final Rule

Across all covered institutions, we anticipate that the final rule will result in about \$11.3 million in one-time costs associated with institutions updating policies and procedures. We account for timing of these impacts by assuming they will occur in 2025. We also identify incremental costs of about \$24.5 million associated with the final rule's reporting, recordkeeping, and third-party disclosure requirements related to institutions responding to allegations of research misconduct. Consistent with the implementation schedule of the final rule, we account for timing of these recurring impacts by assuming they will occur in 2026 and in subsequent years. Over a 5-year time horizon, we report a present value of total costs attributable to the final rule of about \$102.5 million, or annualized costs of about \$21.7 million, both calculated using a constant 2% real discount rate.

TABLE 1—COSTS OF THE FINAL RULE
[Constant 2023 dollars, 2% discount rate]

Year	Cost
2025	\$11,331,191
2026	24,481,283
2027	24,481,283
2028	24,481,283
2029	24,481,283
Present Value	102,499,288
Annualized	21,746,084

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to prepare a regulatory flexibility analysis describing the impact of the final rule on small entities (“institutions” for purposes of the final rule) unless they certify that a final rule will not, if promulgated, have a significant economic impact on a substantial number of small institutions. HHS generally considers a rule to have a significant impact on a substantial number of small institutions if it has at least a 3% impact on revenue on at least 5% of small institutions. We considered whether the final rule would result in effects that exceed these thresholds. This analysis below concludes, and the Secretary certifies that this final rule will not have a significant impact on a substantial number of small institutions, as defined by the Regulatory Flexibility Act, based on the following facts.

As of March 1, 2024, approximately 22 percent (1,412) of 6,394 institutions holding research integrity assurances are small institutions. The primary impact of the final rule on covered institutions results from the reporting and record keeping provisions, which are analyzed in detail under the heading “The Paperwork Reduction Act.” Potentially significant annual burdens apply only if an institution learns of possible research misconduct and begins an inquiry, investigation, or both.

Institutions covered by 42 CFR part 93 reported having conducted a total of 124 inquiries and 121 investigations during the 2023 reporting period. In total, one inquiry and three investigations were conducted by small institutions. Small institutions may be able to avoid developing and filing the full policies and procedures for addressing allegations of research misconduct required by § 93.304 by filing a Small Institution Statement. Under the 2005 regulation, this is called a Small Organization Statement. ORI or another appropriate HHS office will work with small institutions to develop and/or advise on a process for handling allegations of research misconduct

consistent with 42 CFR part 93. The burden of filing the Small Institution Statement is 0.5 hour. Thus, the burden of developing and filing the full policies and procedures for addressing allegations of research misconduct required by § 93.304 will not fall on a substantial number of small entities.

A small entity that files the Small Institution Statement must still report allegations of research misconduct to ORI and comply with all provisions of the final rule except as described in § 93.303. The most significant burden that could fall on an entity filing a Small Institution Statement is in addressing allegations of research misconduct, which would include obtaining all research records and other evidence when there is an allegation of research misconduct, engaging persons to handle the process for addressing the allegations of research misconduct, and submitting reports and evidence to support the small institution's results and conclusions of inquiries or investigations of research misconduct. The average burden per response is estimated at 40 hours. Based on reports of research misconduct over the past five years, fewer than five small institutions will have to incur that burden in any year. Based on this analysis, HHS concludes that the regulations set forth in the final rule will not impose a significant burden on a substantial number of small institutions.

Paperwork Reduction Act

Sections 104, 301–303, 305–313, and 315–318 of this final rule contain information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). These provisions involve the following institutional activities in addressing allegations of misconduct involving PHS-funded research:

Title: The title of the section of the Public Health Service Policies on Research Misconduct involving institutional activities.

Description: The relevant passage(s) of the section describing the institutional information collection requirements.

Description of Respondents: The “respondents” for the collection of information described in this regulation are institutions that apply for or receive PHS support through grants, contracts, or cooperative agreements for any project or program that involves the conduct of biomedical or behavioral research, biomedical or behavioral research training, or activities related to

that research or training (see definition of “Institution” at § 93.216).

Subpart A—General

Section 93.104

(ii) For research misconduct that appears subject to the subsequent use exception, institutions must document their determination that the subsequent use exception does not apply. Such documentation must be retained in accordance with § 93.318.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—40 hours.

Total Annual Burden—9,200 hours.

Subpart C—Responsibilities of Institutions

Compliance and Assurances

Section 93.305

(b) *Access to research records.* Where appropriate, an institution must give the respondent copies of, or reasonable supervised access to, the research records that are sequestered in accordance with paragraph (a) of this section.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—25 hours.

Total Annual Burden—5,750 hours.

(c) *Maintenance of sequestered research records and other evidence.* An institution must maintain the sequestered research records and other evidence as required by § 93.318.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—80 hours.

Total Annual Burden—18,400 hours.

(g) *Notifying ORI of special circumstances.* At any time during a research misconduct proceeding, as defined in § 93.235, an institution must notify ORI immediately if it has reason to believe that any of the following conditions exist:

(1) Health or safety of the public is at risk, including an immediate need to protect human or animal subjects.

(2) HHS resources or interests are threatened.

(3) Research activities should be suspended.

(4) There is reasonable indication of possible violations of civil or criminal law.

(5) Federal action is required to protect the interests of those involved in the research misconduct proceeding.

(6) HHS may need to take appropriate steps to safeguard evidence and protect the rights of those involved.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—1 hour.

Total Annual Burden—230 hours.

The Institutional Assessment

Section 93.306

(c) *Assessment results.*

(2) If the RIO or another designated institutional official determines that requirements for an inquiry are met, they must: (i) document the assessment;

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—80 hours.

Total Annual Burden—18,400 hours.

(ii) promptly sequester all research records and other evidence, consistent with § 93.305(a), and promptly initiate the inquiry.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—160 hours.

Total Annual Burden—36,800 hours.

(3) If the RIO or another designated institutional official determines that requirements for an inquiry are not met, they must keep sufficiently detailed documentation of the assessment to permit a later review by ORI of the reasons why the institution did not conduct an inquiry. Such documentation must be retained in accordance with § 93.318.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—10 hours.

Total Annual Burden—2,300 hours.

The Institutional Inquiry

Section 93.307

(d) Sequestration of records. An institution must obtain all research records and other evidence needed to conduct the research misconduct proceeding, consistent with § 93.305(a).

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—80 hours.

Total Annual Burden—18,400 hours.

Section 93.308

(a) *Notice to respondent.* The institution must notify the respondent whether the inquiry found that an

investigation is warranted. The notice must include a copy of the inquiry report and include a copy of or refer to this part and the institution's policies and procedures adopted under its research integrity assurance.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—2 hours.

Total Annual Burden—460 hours.

Section 93.309

(a) Within 30 days of determining that an investigation is warranted, the institution must provide ORI with a copy of the inquiry report, which includes the following information:

(1) The names, professional aliases, and positions of the respondent and complainant;

(2) A description of the allegation(s) of research misconduct;

(3) The PHS support, including, for example, grant numbers, grant applications, contracts, and publications listing PHS support;

(4) The composition of the inquiry committee, if used, including name(s), position(s), and subject matter expertise;

(5) Inventory of sequestered research records and other evidence and description of how sequestration was conducted;

(6) Transcripts of any transcribed interviews;

(7) Timeline and procedural history;

(8) Any scientific or forensic analyses conducted;

(9) The basis for recommending that the allegation(s) warrant an investigation;

(10) The basis on which any allegation(s) do not merit an investigation;

(11) Any comments on the inquiry report by the respondent or the complainant; and

(12) Any institutional actions implemented, including communications with journals or funding agencies.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—4 hours.

Total Annual Burden—920 hours.

(b) Institutions must keep detailed documentation of inquiries to permit a later assessment by ORI of the reasons why the institution decided not to investigate. Such documentation must be retained in accordance with § 93.318.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—0 hours. Burden accounted for in § 93.316(a)(2).

Total Annual Burden—0 hours.

(c) In accordance with § 93.305(g), institutions must notify ORI of any special circumstances that may exist.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—2 hours.

Total Annual Burden—460 hours.

The Institutional Investigation

Section 93.310

Institutions conducting research misconduct investigations must: (b) Notify ORI of the decision to begin an investigation on or before the date the investigation begins and provide an inquiry report that meets the requirements of § 93.307 and § 93.309.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—0 hours. Burden accounted for in § 93.309(a).

Total Annual Burden—0 hours.

(d) *Notice to the respondent.* Notify the respondent in writing of the allegation(s) within a reasonable amount of time after determining that an investigation is warranted, but before the investigation begins.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—0 hours. Burden accounted for in § 93.308(a).

Total Annual Burden—0 hours.

(g) *Interviews.* During the investigation, an institution must interview each respondent, complainant, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent. (1) Interviews during the investigation must be recorded and transcribed.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—300 hours.

Total Annual Burden—69,000 hours.

(3) The transcript of the interview must be made available to the relevant interviewee for correction.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—4 hours.

Total Annual Burden—920 hours.

(5) The respondent must be provided a transcript of the interview.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—4 hours.

Total Annual Burden—920 hours.

(j) *Pursue leads.* If additional allegations are raised, the respondent(s) must be notified in writing of the additional allegations raised against them.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—2 hours.

Total Annual Burden—460 hours.

Section 93.310

(b) *Extension of time limit.* If unable to complete the investigation in 180 days, the institution must ask ORI for an extension in writing that includes the circumstances or issues warranting additional time.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—1 hour.

Total Annual Burden—230 hours.

(c) *Progress reports.* If ORI grants an extension, it may direct the institution to file periodic progress reports.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—1 hour.

Total Annual Burden—230 hours.

Section 93.312

(a) The institution must give the respondent a copy of the draft investigation report and, concurrently, a copy of, or supervised access to, the research records and other evidence that the investigation committee considered or relied on. The respondent must submit any comments on the draft report to the institution within 30 days of receiving the draft investigation report.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—2 hours.

Total Annual Burden—460 hours.

Section 93.313

A final investigation report for each respondent must be in writing and include:

(a) Description of the nature of the allegation(s) of research misconduct,

including any additional allegation(s) addressed during the research misconduct proceeding.

(b) Description and documentation of the PHS support, including, for example, any grant numbers, grant applications, contracts, and publications listing PHS support.

(c) Description of the specific allegation(s) of research misconduct for consideration in the investigation of the respondent.

(d) Composition of investigation committee, including name(s), position(s), and subject matter expertise.

(e) Inventory of sequestered research records and other evidence, except records the institution did not consider or rely on; and a description of how any sequestration was conducted during the investigation. This inventory must include manuscripts and funding proposals that were considered or relied on during the investigation.

(f) Transcripts of all interviews conducted, as described in § 93.310(g).

(g) Identification of the specific published papers, manuscripts submitted but not accepted for publication (including online publication), PHS funding applications, progress reports, presentations, posters, or other research records that allegedly contained the falsified, fabricated, or plagiarized material.

(h) Any scientific or forensic analyses conducted.

(i) If not already provided to ORI, the institutional policies and procedures under which the investigation was conducted.

(j) Any comments made by the respondent and complainant on the draft investigation report and the investigation committee's consideration of those comments.

(k) A statement for each separate allegation of whether the investigation committee recommends a finding of research misconduct.

(1) If the investigation committee recommends a finding of research misconduct for an allegation, the investigation report must, for that allegation:

(i) Identify the individual(s) who committed the research misconduct.

(ii) Indicate whether the research misconduct was falsification, fabrication, and/or plagiarism.

(iii) Indicate whether the research misconduct was committed intentionally, knowingly, or recklessly.

(iv) State whether the other requirements for a finding of research misconduct, as described in § 93.103, have been met.

(v) Summarize the facts and the analysis which support the conclusion

and consider the merits of any explanation by the respondent.

(vi) Identify the specific PHS support.

(vii) Identify whether any publications need correction or retraction.

(2) If the investigation committee does not recommend a finding of research misconduct for an allegation, the investigation report must provide a detailed rationale.

(l) List of any current support or known applications or proposals for support that the respondent has pending with PHS and non-PHS Federal agencies.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—160 hours.

Total Annual Burden—36,800 hours.

Section 93.315

(a) If a respondent appeals an institution's finding(s) of research misconduct or institutional actions, the institution must promptly notify ORI.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—1 hour.

Total Annual Burden—230 hours.

(b) If the institution has not transmitted its institutional record to ORI in accordance with § 93.316 prior to the appeal, the institution must wait until the appeal is concluded to transmit its institutional record. The institution must ensure that the complete record of the appeal is included in the institutional record consistent with § 93.220(a)(5).

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—0 hours. Burden accounted for in § 93.316(a).

Total Annual Burden—0 hours.

(c) If the institution has transmitted its institutional record to ORI in accordance with § 93.316 prior to the appeal, the institution must provide ORI a complete record of the appeal once the appeal is concluded.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—2 hours.

Total Annual Burden—460 hours.

Section 93.316

After the Institutional Deciding Official has made a final determination of research misconduct findings in accordance with § 93.314, the institution must transmit the institutional record to ORI. The institutional record must be consistent with § 93.220 and logically organized.

Per § 93.220: The institutional record comprises:

(a) The records that the institution compiled or generated during the research misconduct proceeding, except records the institution did not consider or rely on. These records include, but are not limited to:

(1) Documentation of the assessment as required by § 93.306(c).

(2) If an inquiry is conducted, the inquiry report and all records (other than drafts of the report) considered or relied on during the inquiry, including, but not limited to, research records and the transcripts of any transcribed interviews conducted during the inquiry, information the respondent provided to the institution, and the documentation of any decision not to investigate as required by § 93.309(c).

(3) If an investigation is conducted, the investigation report and all records (other than drafts of the report) considered or relied on during the investigation, including, but not limited to, research records, the transcripts of each interview conducted pursuant to § 93.310(g), and information the respondent provided to the institution.

(4) Decision(s) by the Institutional Deciding Official, such as the written decision from the Institutional Deciding Official under § 93.314.

(5) The complete record of any institutional appeal consistent with § 93.315.

(b) A single index listing all the research records and evidence that the institution compiled during the research misconduct proceeding, except records the institution did not consider or rely on.

(c) A general description of the records that were sequestered but not considered or relied on.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—4 hours.

Total Annual Burden—920 hours.

Section 93.317

(a) Institutions must notify ORI in advance if the institution plans to close

a research misconduct proceeding at the assessment, inquiry, investigation, or appeal stage on the basis that the respondent has admitted to committing research misconduct or a settlement with the respondent has been reached.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—1 hour.

Total Annual Burden—230 hours.

(b) The [respondent's written] admission statement must meet all elements required for a research misconduct finding under § 93.103 and must be provided to ORI before the institution closes its research misconduct proceeding.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—10 hours.

Total Annual Burden—2,300 hours.

(b—continued): The institution must also provide a statement to ORI describing how it determined that the scope of the misconduct was fully addressed by the admission and confirmed the respondent's culpability.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—10 hours.

Total Annual Burden—2,300 hours.

Section 93.318

(a) Maintenance of institutional record and all sequestered evidence. An institution must maintain the institutional record and all sequestered evidence including physical objects (regardless of whether the evidence is part of the institutional record) in a secure manner for seven years after completion of the proceeding or the completion of any HHS proceeding involving the research misconduct allegation under subparts D and E of this part, whichever is later, unless custody has been transferred to HHS under paragraph (b) of this section or ORI advises otherwise in writing.

Number of Respondents—230.

Number of Responses per Respondent—1.

Annual Average Burden per Response—8 hours.

Total Annual Burden—1,840 hours.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE (9/3/2024)

Forms (If necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden Hours
§ 93.104	Institutions	230	1	40	9,200
§ 93.305.b	Institutions	230	1	25	5,750
§ 93.305.c	Institutions	230	1	80	18,400
§ 93.325	Institutions	230	1	1	230
§ 93.306.c.2.i	Institutions	230	1	80	18,400
§ 93.306.c.2.ii	Institutions	230	1	160	36,800
§ 93.306.c.2.iii	Institutions	230	1	10	2,300
§ 93.307	Institutions	230	1	80	18,400
§ 93.308	Institutions	230	1	2	460
Sec 93.309.a	Institutions	230	1	4	920
Sec 93.309.c	Institutions	230	1	2	460
§ 93.310.g.1	Institutions	230	1	300	69,000
§ 93.310.g.3	Institutions	230	1	4	920
§ 93.310.g.5	Institutions	230	1	4	920
§ 93.310.j	Institutions	230	1	2	460
§ 93.310.b	Institutions	230	1	1	230
§ 93.310.c	Institutions	230	1	1	230
§ 93.312	Institutions	230	1	2	460
§ 93.313	Institutions	230	1	160	36,800
§ 93.315.a	Institutions	230	1	1	230
§ 93.315.c	Institutions	230	1	2	460
Total .....	.....	.....	.....	.....	221,030

Estimated annualized cost to respondents (9/3/2024) Forms (If necessary)	Type of respondent	Total burden hours	Hourly wage rate	Total respondent cost
§ 93.104	Institutions	9,200	\$111	\$1,018,992
§ 93.305.b	Institutions	5,750	111	636,870
§ 93.305.c	Institutions	18,400	111	2,037,984
§ 93.325	Institutions	230	111	25,475
§ 93.306.c.2.i	Institutions	18,400	111	2,037,984
§ 93.306.c.2.ii	Institutions	36,800	111	4,075,968
§ 93.306.c.2.iii	Institutions	2,300	111	254,748
§ 93.307	Institutions	18,400	111	2,037,984
§ 93.308	Institutions	460	111	50,950
Sec 93.309.a	Institutions	920	111	101,899
Sec 93.309.c	Institutions	460	111	50,950
§ 93.310.g.1	Institutions	69,000	111	7,642,440
§ 93.310.g.3	Institutions	920	111	101,899
§ 93.310.g.5	Institutions	920	111	101,899
§ 93.310.j	Institutions	460	111	50,950
§ 93.310.b	Institutions	230	111	25,475
§ 93.310.c	Institutions	230	111	25,475
§ 93.312	Institutions	460	111	50,950
§ 93.313	Institutions	36,800	111	4,075,968
§ 93.315.a	Institutions	230	111	25,475
§ 93.315.c	Institutions	460	111	50,950
Total .....	.....	.....	.....	24,481,283

Following publication of the final rule, ORI will publish 60-day and 30-day notices in the **Federal Register** seeking public comment on these information collection requirements and associated burden estimates, and ORI will submit an Information Collection Request (ICR) to OMB seeking approval for these requirements under existing OMB Control Number 0937–0198, which currently covers the assurance and annual reporting requirements of 42 CFR part 93 (the Institutional Assurance and Annual Report on Possible Research

Misconduct, PHS–6349, and the Assurance of Compliance by Sub-Award Recipients, PHS–6315). Before the applicability date of this final rule, ORI anticipates publishing a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove this ICR. This final rule does not make any substantive revisions to the Assurance or Annual Report that would require clearance under the PRA, but ORI anticipates making minor updates to these forms as part of the upcoming revision to 0937–0198.

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.

List of Subjects in 42 CFR Part 93

Government contracts, Grant programs, Reporting and recordkeeping requirements, Research, Science and technology.

■ For reasons discussed in the preamble, HHS is revising 42 CFR part 93 to read as follows:

PART 93—PUBLIC HEALTH SERVICE POLICIES ON RESEARCH MISCONDUCT

Sec.

- 93.25 Organization of this part.
93.50 Special terms.
93.75 Application of effective date to research misconduct proceedings.

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93.215 Inquiry.
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93.217 Institutional Certifying Official.
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Authority: 42 U.S.C. 216 and 289b

§ 93.25 Organization of this part.

This part is subdivided into five subparts. Each subpart contains information related to a broad topic or specific audience with special responsibilities as shown in the following table.

TABLE 1 TO § 93.25

In subpart . . .	You will find sections related to . . .
A	General information about this part.
B	Definitions used in this part.
C	Responsibilities of institutions with PHS support.
D	Responsibilities of the U.S. Department of Health and Human Services and the Office of Research Integrity.
E	Information on how to contest ORI research misconduct findings and proposed HHS administrative actions.

§ 93.50 Special terms.

This part uses terms throughout the text that have special meaning. Those terms are defined in subpart B of this part.

§ 93.75 Application of effective date to research misconduct proceedings.

(a) An institution must follow this part for allegations received by the institution on or after January 1, 2026, except for the policies and procedures required under §§ 93.300(a) and 93.302(b), which must be implemented and submitted by due date of the annual report covering the 2025 reporting year, as specified by ORI.

(b) For allegations received by an institution before January 1, 2026, unless the institution and the respondent both elect in writing to follow this part, an institution must follow this part as published in the 2005 edition of the Code of Federal Regulations.

Subpart A—General**§ 93.100 General policy.**

(a) Research misconduct involving Public Health Service (PHS) support is contrary to the interests of the PHS and the Federal Government, to the health and safety of the public, to the integrity of research, and to the conservation of public funds.

(b) The U.S. Department of Health and Human Services (HHS) and institutions that apply for or receive PHS support for biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or research training share responsibility for the integrity of the research process. HHS has ultimate oversight authority for PHS-supported research, and for taking other actions as appropriate or necessary, including the right to assess allegations and to perform inquiries or investigations at any time. Institutions and institutional members have an affirmative duty to protect PHS funds from misuse by ensuring the integrity of all PHS-supported work, and primary responsibility for responding to and reporting allegations of research misconduct, as provided in this part.

§ 93.101 Purpose.

The purpose of this part is to—

(a) Establish the responsibilities of HHS, the Office of Research Integrity (ORI), and institutions in addressing allegations of research misconduct;

(b) Define what constitutes research misconduct in PHS-supported research;

(c) Establish the requirements for a finding of research misconduct;

(d) Define the general types of administrative actions HHS may take in response to research misconduct;

(e) Require institutions to:

(1) Develop and implement policies and procedures for reporting and addressing allegations of research misconduct covered by this part;

(2) Provide HHS with the assurances necessary to permit institutions to participate in PHS-supported research;

(f) Protect the health and safety of the public, promote the integrity of PHS-supported research and the research process, and conserve public funds.

§ 93.102 Applicability.

(a) Every extramural or intramural institution that applies for or receives PHS support for biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or research training must comply with this part.

(b) This part applies to allegations of research misconduct involving:

(1) Applications or proposals for PHS support for biomedical or behavioral extramural or intramural research, biomedical or behavioral research training, or activities related to that research or research training;

(2) PHS-supported biomedical or behavioral extramural or intramural research;

(3) PHS-supported biomedical or behavioral extramural or intramural research training programs;

(4) PHS-supported extramural or intramural activities that are related to biomedical or behavioral research or research training, such as, but not limited to, the operation of tissue and data banks or the dissemination of research information;

(5) Research records produced during PHS-supported research, research training, or activities related to that research or research training; and

(6) Research proposed, performed, reviewed, or reported, as well as any research record generated from that research, regardless of whether an application or proposal for PHS funds resulted in an awarded grant, contract, cooperative agreement, subaward, or other form of PHS support.

(c) This part does not supersede or establish an alternative to any applicable statutes, regulations, policies, or procedures for handling fiscal improprieties, the ethical treatment of human or animal subjects, criminal matters, personnel actions against Federal employees, or addressing whistleblowers and/or retaliation.

(d) This part does not supersede or establish an alternative to the HHS suspension and debarment regulations set forth at 2 CFR part 180, as implemented by HHS at 2 CFR part 376; and 48 CFR part 9, subpart 9.4, as supplemented by HHS at 48 CFR part 309, subpart 309.4. The Suspension and Debarment Official SDO and ORI may coordinate actions to the extent consistent with the SDO's and ORI's respective authorities. Such coordination includes jointly issuing notices or seeking settlements of actions and proceedings.

(e) This part does not prohibit or otherwise limit how institutions handle allegations of misconduct that do not fall within this part's definition of research misconduct or that do not involve PHS support.

§ 93.103 Requirements for findings of research misconduct.

A finding of research misconduct made under this part requires that:

(a) There be a significant departure from accepted practices of the relevant research community; and

(b) The misconduct be committed intentionally, knowingly, or recklessly; and

(c) The allegation be proven by a preponderance of the evidence.

§ 93.104 Time limitations.

(a) *Six-year limitation.* This part applies only to research misconduct occurring within six years of the date HHS or an institution receives an allegation of research misconduct.

(b) *Exceptions to the six-year limitation.* Paragraph (a) of this section does not apply in the following instances:

(1) *Subsequent use exception.* The respondent continues or renews any incident of alleged research misconduct that occurred before the six-year limitation through the use of, republication of, or citation to the portion(s) of the research record (e.g., processed data, journal articles, funding proposals, data repositories) alleged to have been fabricated, falsified, or plagiarized, for the potential benefit of the respondent.

(i) When the respondent uses, republishes, or cites to the portion(s) of the research record that is alleged to have been fabricated, falsified, or plagiarized, in submitted or published manuscripts, submitted PHS grant applications, progress reports submitted to PHS funding components, posters, presentations, or other research records within six years of when the allegations were received by HHS or an institution, this exception applies.

(ii) For research misconduct that appears subject to the subsequent use exception, institutions must document their determination that the subsequent use exception does not apply. Such documentation must be retained in accordance with § 93.318.

(2) *Exception for the health or safety of the public.* If ORI or the institution, following consultation with ORI, determines that the alleged research misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public, this exception applies.

§ 93.105 Evidentiary standards.

(a) *Standard of proof.* An institutional or HHS finding of research misconduct must be proved by a preponderance of the evidence.

(b) *Burden of proof.* (1) The institution or HHS has the burden of proof for making a finding of research misconduct. A respondent's destruction of research records documenting the questioned research is evidence of research misconduct where the institution or HHS establishes by a

preponderance of the evidence that the respondent intentionally or knowingly destroyed records after being informed of the research misconduct allegations. A respondent's failure to provide research records documenting the questioned research is evidence of research misconduct where the respondent claims to possess the records but refuses to provide them upon request.

(2) The respondent has the burden of going forward with and proving, by a preponderance of the evidence, all affirmative defenses raised. In determining whether HHS or the institution has carried the burden of proof imposed by this part, the finder of fact shall give due consideration to admissible, credible evidence of honest error or difference of opinion presented by the respondent.

(3) The respondent has the burden of going forward with and proving, by a preponderance of the evidence, any mitigating factors relevant to a decision to impose administrative actions after a research misconduct proceeding.

§ 93.106 Confidentiality.

(a) Disclosure of the identity of respondents, complainants, and witnesses while conducting the research misconduct proceedings is limited, to the extent possible, to those who need to know, as determined by the institution, consistent with a thorough, competent, objective, and fair research misconduct proceeding, and as allowed by law. Those who need to know may include institutional review boards, journals, editors, publishers, co-authors, and collaborating institutions. This limitation on disclosure of the identity of respondents, complainants, and witnesses no longer applies once an institution has made a final determination of research misconduct findings. The institution, however, must disclose the identity of respondents, complainants, or other relevant persons to ORI pursuant to an ORI review of research misconduct proceedings under this part.

(b) Except as may otherwise be prescribed by applicable law, confidentiality must be maintained for any records or evidence from which research subjects might be identified. Disclosure is limited to those who need to know to carry out a research misconduct proceeding.

(c) This section does not prohibit institutions from managing published data or acknowledging that data may be unreliable.

§ 93.107 Coordination with other agencies.

(a) When more than one agency of the Federal Government has jurisdiction over a research misconduct allegation, HHS will cooperate with the other agencies in designating a lead agency to coordinate the response of the agencies to the allegation. Where HHS is not the lead agency, it may, in consultation with the lead agency, take appropriate action.

(b) In research misconduct proceedings involving more than one agency, HHS may refer to the other agency's (or agencies') evidence or reports if HHS determines that the evidence or reports will assist in resolving HHS issues. In appropriate cases, HHS may seek to resolve allegations jointly with the other agency or agencies.

Subpart B—Definitions

§ 93.200 Accepted practices of the relevant research community.

Accepted practices of the relevant research community means those practices established by 42 CFR part 93 and by PHS funding components, as well as commonly accepted professional codes or norms within the overarching community of researchers and institutions that apply for and receive PHS awards.

§ 93.201 Administrative action.

Administrative action means an HHS action, consistent with § 93.407, taken in response to a research misconduct proceeding to protect the health and safety of the public, to promote the integrity of PHS-supported biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or research training, or to conserve public funds.

§ 93.202 Administrative record.

Administrative record comprises: the institutional record; any information provided by the respondent to ORI, including but not limited to the transcript of any virtual or in-person meetings under § 93.403(b) between the respondent and ORI, and correspondence between the respondent and ORI; any additional information provided to ORI while the case is pending before ORI; and any analysis or additional information generated or obtained by ORI. Any analysis or additional information generated or obtained by ORI will also be made available to the respondent.

§ 93.203 Allegation.

Allegation means a disclosure of possible research misconduct through

any means of communication and brought directly to the attention of an institutional or HHS official.

§ 93.204 Assessment.

Assessment means a consideration of whether an allegation of research misconduct appears to fall within the definition of research misconduct; appears to involve PHS-supported biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or research training; and is sufficiently credible and specific so that potential evidence of research misconduct may be identified. The assessment only involves the review of readily accessible information relevant to the allegation.

§ 93.205 Charge letter.

Charge letter means the written notice, as well as any amendments to the notice, sent to the respondent stating the findings of research misconduct and any proposed HHS administrative actions.

§ 93.206 Complainant.

Complainant means an individual who in good faith makes an allegation of research misconduct.

§ 93.207 Contract.

Contract means an acquisition instrument awarded under the Federal Acquisition Regulation (FAR), 48 CFR chapter 1.

§ 93.208 Day.

Day means calendar day unless otherwise specified. If a deadline falls on a Saturday, Sunday, or Federal holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or Federal holiday.

§ 93.209 Departmental Appeals Board or DAB.

Departmental Appeals Board or DAB means the organization, within the HHS Office of the Secretary, established to conduct hearings and provide impartial review of disputed decisions made by HHS operating components.

§ 93.210 Evidence.

Evidence means anything offered or obtained during a research misconduct proceeding that tends to prove or disprove the existence of an alleged fact. Evidence includes documents, whether in hard copy or electronic form, information, tangible items, and testimony.

§ 93.211 Fabrication.

Fabrication means making up data or results and recording or reporting them.

§ 93.212 Falsification.

Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

§ 93.213 Funding component.

Funding component means any organizational unit of the PHS authorized to award grants, contracts, or cooperative agreements for any activity covered by this part involving research or research training; funding components may be agencies, bureaus, centers, institutes, divisions, offices, or other awarding units within the PHS.

§ 93.214 Good faith.

(a) Good faith as applied to a complainant or witness means having a reasonable belief in the truth of one's allegation or testimony, based on the information known to the complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if made with knowledge of or reckless disregard for information that would negate the allegation or testimony.

(b) Good faith as applied to an institutional or committee member means cooperating with the research misconduct proceeding by impartially carrying out the duties assigned for the purpose of helping an institution meet its responsibilities under this part. An institutional or committee member does not act in good faith if their acts or omissions during the research misconduct proceedings are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

§ 93.215 Inquiry.

Inquiry means preliminary information-gathering and preliminary fact-finding that meets the criteria and follows the procedures of § 93.307 through § 93.309.

§ 93.216 Institution.

Institution means any person that applies for or receives PHS support for any activity or program that involves the conduct of biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or training. This includes, but is not limited to, colleges and universities, PHS intramural biomedical or behavioral research laboratories, research and development centers, national user facilities, industrial laboratories or other research institutes, research institutions, and independent researchers.

§ 93.217 Institutional Certifying Official.

Institutional Certifying Official means the institutional official responsible for assuring on behalf of an institution that the institution has written policies and procedures for addressing allegations of research misconduct, in compliance with this part; and complies with its own policies and procedures and the requirements of this part. The Institutional Certifying Official is responsible for certifying the content of the institution's annual report, which contains information specified by ORI on the institution's compliance with this part, and ensuring the report is submitted to ORI, as required.

§ 93.218 Institutional Deciding Official.

Institutional Deciding Official means the institutional official who makes final determinations on allegations of research misconduct and any institutional actions. The same individual cannot serve as the Institutional Deciding Official and the Research Integrity Officer.

§ 93.219 Institutional member.

Institutional member or members means an individual (or individuals) who is employed by, is an agent of, or is affiliated by contract or agreement with an institution. Institutional members may include, but are not limited to, officials, tenured and untenured faculty, teaching and support staff, researchers, research coordinators, technicians, postdoctoral and other fellows, students, volunteers, subject matter experts, consultants, or attorneys, or employees or agents of contractors, subcontractors, or sub-awardees.

§ 93.220 Institutional record.

The institutional record comprises:

(a) The records that the institution compiled or generated during the research misconduct proceeding, except records the institution did not consider or rely on. These records include, but are not limited to:

(1) Documentation of the assessment as required by § 93.306(c).

(2) If an inquiry is conducted, the inquiry report and all records (other than drafts of the report) considered or relied on during the inquiry, including, but not limited to, research records and the transcripts of any transcribed interviews conducted during the inquiry, information the respondent provided to the institution, and the documentation of any decision not to investigate as required by § 93.309(c).

(3) If an investigation is conducted, the investigation report and all records (other than drafts of the report) considered or relied on during the

investigation, including, but not limited to, research records, the transcripts of each interview conducted pursuant to § 93.310(g), and information the respondent provided to the institution.

(4) Decision(s) by the Institutional Deciding Official, such as the written decision from the Institutional Deciding Official under § 93.314.

(5) The complete record of any institutional appeal consistent with § 93.315.

(b) A single index listing all the research records and evidence that the institution compiled during the research misconduct proceeding, except records the institution did not consider or rely on.

(c) A general description of the records that were sequestered but not considered or relied on.

§ 93.221 Intentionally.

To act intentionally means to act with the aim of carrying out the act.

§ 93.222 Investigation.

Investigation means the formal development of a factual record and the examination of that record that meets the criteria and follows the procedures of §§ 93.310 through 93.317.

§ 93.223 Knowingly.

To act knowingly means to act with awareness of the act.

§ 93.224 Notice.

Notice means a written or electronic communication served in person or sent by mail or its equivalent to the last known street address, facsimile number, or email address of the addressee.

§ 93.225 Office of Research Integrity or ORI.

Office of Research Integrity or ORI means the office established by Public Health Service Act section 493 (42 U.S.C. 289b) and to which the HHS Secretary has delegated responsibility for addressing research integrity and misconduct issues related to PHS-supported activities.

§ 93.226 Person.

Person means any individual, corporation, partnership, institution, association, unit of government, or other legal entity, however organized.

§ 93.227 Plagiarism.

Plagiarism means the appropriation of another person's ideas, processes, results, or words, without giving appropriate credit.

(a) Plagiarism includes the unattributed verbatim or nearly verbatim copying of sentences and paragraphs from another's work that

materially misleads the reader regarding the contributions of the author. It does not include the limited use of identical or nearly identical phrases that describe a commonly used methodology.

(b) Plagiarism does not include self-plagiarism or authorship or credit disputes, including disputes among former collaborators who participated jointly in the development or conduct of a research project. Self-plagiarism and authorship disputes do not meet the definition of research misconduct.

§ 93.228 Preponderance of the evidence.

Preponderance of the evidence means proof by evidence that, compared with evidence opposing it, leads to the conclusion that the fact at issue is more likely true than not.

§ 93.229 Public Health Service or PHS.

Public Health Service or PHS consists of the following components within HHS: the Office of the Assistant Secretary for Health, the Office of Global Affairs, the Administration for Strategic Preparedness and Response, the Advanced Research Projects Agency for Health, the Agency for Healthcare Research and Quality, the Agency for Toxic Substances and Disease Registry, the Centers for Disease Control and Prevention, the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, the National Institutes of Health, the Substance Abuse and Mental Health Services Administration, and any other components of HHS designated or established as components of the Public Health Service.

§ 93.230 PHS support.

PHS support means PHS funding, or applications or proposals for PHS funding, for biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or training, that may be provided through: funding for PHS intramural research; PHS grants, cooperative agreements, or contracts; subawards, contracts, or subcontracts under those PHS funding instruments; or salary or other payments under PHS grants, cooperative agreements, or contracts.

§ 93.231 Recklessly.

To act recklessly means to propose, perform, or review research, or report research results, with indifference to a known risk of fabrication, falsification, or plagiarism.

§ 93.232 Research.

Research means a systematic experiment, study, evaluation,

demonstration, or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) by establishing, discovering, developing, elucidating, or confirming information or underlying mechanisms related to biological causes, functions, or effects; diseases; treatments; or related matters to be studied.

§ 93.233 Research Integrity Officer or RIO.

Research Integrity Officer or RIO refers to the institutional official responsible for administering the institution's written policies and procedures for addressing allegations of research misconduct in compliance with this part.

§ 93.234 Research misconduct.

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.

§ 93.235 Research misconduct proceeding.

Research misconduct proceeding means any actions related to alleged research misconduct taken under this part, including allegation assessments, inquiries, investigations, ORI oversight reviews, and appeals under subpart E of this part.

§ 93.236 Research record.

Research record means the record of data or results that embody the facts resulting from scientific inquiry. Data or results may be in physical or electronic form. Examples of items, materials, or information that may be considered part of the research record include, but are not limited to, research proposals, raw data, processed data, clinical research records, laboratory records, study records, laboratory notebooks, progress reports, manuscripts, abstracts, theses, records of oral presentations, online content, lab meeting reports, and journal articles.

§ 93.237 Respondent.

Respondent means the individual against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

§ 93.238 Retaliation.

Retaliation means an adverse action taken against a complainant, witness, or committee member by an institution or one of its members in response to:

(a) A good faith allegation of research misconduct; or

(b) Good faith cooperation with a research misconduct proceeding.

§ 93.239 Secretary or HHS.

Secretary or HHS means the Secretary of HHS or any other official or employee of HHS to whom the Secretary delegates authority.

§ 93.240 Small institution.

Small institution means an institution that may be too small to conduct an inquiry or investigation into an allegation of research misconduct as required by this part without actual or apparent conflicts of interest.

§ 93.241 Suspension and Debarment Official or SDO.

Suspension and Debarment Official (SDO) means the HHS official authorized to impose suspension and debarment, which are the actions that Federal agencies take to disqualify persons deemed not presently responsible from doing business with the Federal Government.

Subpart C—Responsibilities of Institutions

Compliance and Assurances

§ 93.300 General responsibilities for compliance.

Institutions must:

(a) Have written policies and procedures for addressing allegations of research misconduct that meet the requirements of this part;

(b) Respond to each allegation of research misconduct for which the institution is responsible under this part in a thorough, competent, objective, and fair manner, including taking precautions to ensure that individuals responsible for carrying out any part of the research misconduct proceeding do not have unresolved personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses;

(c) Foster a research environment that promotes research integrity and the responsible conduct of research, discourages research misconduct, and deals promptly with allegations or evidence of possible research misconduct;

(d) Take all reasonable and practical steps to protect the positions and reputations of good faith complainants, witnesses, and committee members and to protect these individuals from retaliation by respondents and/or other institutional members;

(e) Provide confidentiality consistent with § 93.106 to all respondents, complainants, and witnesses in a research misconduct proceeding, and to

research subjects identifiable from research records or other evidence;

(f) Take all reasonable and practical steps to ensure the cooperation of respondents and other institutional members with research misconduct proceedings, including, but not limited to, their providing information, research records, and other evidence;

(g) Cooperate with HHS during any research misconduct proceeding or compliance review, including addressing deficiencies or additional allegations in the institutional record if directed by ORI;

(h) Assist in administering and enforcing any HHS administrative actions imposed on its institutional members; and

(i) Have an active research integrity assurance.

§ 93.301 Research integrity assurances.

(a) *General policy.* (1) An institution that applies for or receives PHS support for biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or research training, must provide HHS with an assurance of compliance with this part by establishing and then maintaining an active research integrity assurance.

(2) PHS funding components may only authorize release of funds for extramural biomedical and behavioral research, biomedical and behavioral research training, or activities related to that research or research training, to institutions with an active research integrity assurance on file with ORI.

(b) *Research integrity assurance.* The Institutional Certifying Official must assure on behalf of the institution, initially and then annually thereafter, that the institution:

(1) Has written policies and procedures for addressing allegations of research misconduct, in compliance with this part.

(2) Complies with its policies and procedures for addressing allegations of research misconduct.

(3) Complies with all provisions of this part.

§ 93.302 Maintaining active research integrity assurances.

(a) *Compliance with this part.* ORI considers an institution in compliance with this part when it:

(1) Has policies and procedures for addressing allegations of research misconduct according to this part, keeps those policies in compliance with this part, and upon request, provides them to ORI and other HHS components.

(2) Complies with its policies and procedures for addressing allegations of research misconduct.

(3) Complies with all provisions of this part.

(4) Takes all reasonable and practical specific steps to foster research integrity consistent with § 93.300, including but not limited to:

(i) Informing the institution's members about its policies and procedures for addressing allegations of research misconduct, and the institution's commitment to compliance with the policies and procedures; and

(ii) Making its policies and procedures for addressing allegations of research misconduct publicly available.

(b) *Annual report.* An institution must file an annual report with ORI, which contains information specified by ORI, on the institution's compliance with this part. The Institutional Certifying Official is responsible for certifying the content of this report and for ensuring the report is submitted as required.

(c) *Additional information.* Along with its annual report, an institution must send ORI such other information as ORI may request on the institution's research misconduct proceedings covered by this part and the institution's compliance with the requirements of this part.

§ 93.303 Research integrity assurances for small institutions.

(a) Small institutions may file a Small Institution Statement with ORI in place of the institutional policies and procedures required by §§ 93.300(a), 93.301, and 93.304, upon approval by ORI.

(b) The Small Institution Statement does not relieve the institution from complying with any other provision of this part.

(c) By submitting a Small Institution Statement, the institution agrees to report all allegations of research misconduct to ORI. ORI or another appropriate HHS office will work with the institution to develop and/or advise on a process for handling allegations of research misconduct consistent with this part.

(d) If a small institution has or believes it has a conflict of interest during any phase of a research misconduct proceeding, the small institution may contact ORI for guidance.

§ 93.304 Institutional policies and procedures.

Institutions seeking an approved research integrity assurance must have written policies and procedures for addressing allegations of research misconduct. Such policies and procedures must:

(a) Address and be consistent with all applicable requirements pertaining to

institutional responsibilities included in this part;

(b) Include and be consistent with applicable definitions in this part; and

(c) Provide for all reasonable and practical efforts, if requested and as appropriate, to protect or restore the reputation of persons alleged to have engaged in research misconduct but against whom no finding of research misconduct is made.

§ 93.305 General conduct of research misconduct proceedings.

(a) *Sequestration of research records and other evidence.* An institution must promptly take all reasonable and practical steps to obtain all research records and other evidence, which may include copies of the data or other evidence so long as those copies are substantially equivalent in evidentiary value, needed to conduct the research misconduct proceeding; inventory the research records and other evidence; and sequester them in a secure manner. Where the research records or other evidence are located on or encompass scientific instruments shared by multiple users, institutions may obtain copies of the data or other evidence from such instruments, so long as those copies are substantially equivalent in evidentiary value to the instruments. Whenever possible, the institution must obtain the research records or other evidence:

(1) Before or at the time the institution notifies the respondent of the allegation(s); and

(2) Whenever additional items become known or relevant to the inquiry or investigation.

(b) *Access to research records.* Where appropriate, an institution must give the respondent copies of, or reasonable supervised access to, the research records that are sequestered in accordance with paragraph (a) of this section.

(c) *Maintenance of sequestered research records and other evidence.* An institution must maintain the sequestered research records and other evidence as required by § 93.318.

(d) *Multiple respondents.* If an institution identifies additional respondents during an inquiry or investigation, the institution is not required to conduct a separate inquiry for each new respondent. However, each additional respondent must be provided notice of and an opportunity to respond to the allegations, consistent with this subpart.

(e) *Multiple institutions.* When allegations involve research conducted at multiple institutions, one institution must be designated as the lead

institution if a joint research misconduct proceeding is conducted. In a joint research misconduct proceeding, the lead institution should obtain research records and other evidence pertinent to the proceeding, including witness testimony, from the other relevant institutions. By mutual agreement, the joint research misconduct proceeding may include committee members from the institutions involved. The determination of whether further inquiry and/or investigation is warranted, whether research misconduct occurred, and the institutional actions to be taken may be made by the institutions jointly or tasked to the lead institution.

(f) *Using a committee, consortium, or other person for research misconduct proceedings.* (1) An institution must address any potential, perceived, or actual personal, professional, or financial conflicts of interest between members of the committee or consortium, or other person, and the complainant, respondent, or witnesses.

(2) An institution must ensure that a committee, consortium, or person acting on its behalf conducts research misconduct proceedings in compliance with the requirements of this part.

(g) *Notifying ORI of special circumstances.* At any time during a research misconduct proceeding, as defined in § 93.235, an institution must notify ORI immediately if it has reason to believe that any of the following conditions exist:

(1) Health or safety of the public is at risk, including an immediate need to protect human or animal subjects.

(2) HHS resources or interests are threatened.

(3) Research activities should be suspended.

(4) There is reasonable indication of possible violations of civil or criminal law.

(5) Federal action is required to protect the interests of those involved in the research misconduct proceeding.

(6) HHS may need to take appropriate steps to safeguard evidence and protect the rights of those involved.

The Institutional Assessment

§ 93.306 Institutional assessment.

(a) *Purpose.* An assessment's purpose is to determine whether an allegation warrants an inquiry.

(b) *Conducting the institutional assessment.* Upon receiving an allegation of research misconduct, the RIO or another designated institutional official must promptly assess the allegation to determine whether the allegation:

(1) Falls within the definition of research misconduct under this part;

(2) Is within the applicability criteria of § 93.102; and

(3) Is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

(c) *Assessment results.* (1) An inquiry must be conducted if the allegation meets the three assessment criteria in paragraph (b) of this section.

(2) If the RIO or another designated institutional official determines that requirements for an inquiry are met, they must:

(i) Document the assessment; and

(ii) Promptly sequester all research records and other evidence, consistent with § 93.305(a), and promptly initiate the inquiry.

(3) If the RIO or another designated institutional official determines that requirements for an inquiry are not met, they must keep sufficiently detailed documentation of the assessment to permit a later review by ORI of the reasons why the institution did not conduct an inquiry. Such documentation must be retained in accordance with § 93.318.

The Institutional Inquiry

§ 93.307 Institutional inquiry.

(a) *Criteria warranting an inquiry.* An inquiry is warranted if the allegation meets the following three criteria:

(1) Falls within the definition of research misconduct under this part;

(2) Is within the applicability criteria of § 93.102; and

(3) Is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

(b) *Purpose.* An inquiry's purpose is to conduct an initial review of the evidence to determine whether an allegation warrants an investigation. An inquiry does not require a full review of the evidence related to the allegation.

(c) *Notice to the respondent.* At the time of or before beginning an inquiry, an institution must make a good faith effort to notify in writing the presumed respondent, if any. If the inquiry subsequently identifies additional respondents, the institution must notify them. Only allegations specific to a particular respondent are to be included in the notification to that respondent. If additional allegations are raised, the respondent(s) must be notified in writing of the additional allegations raised against them.

(d) *Sequestration of records.* An institution must obtain all research records and other evidence needed to conduct the research misconduct proceeding, consistent with § 93.305(a).

(e) *Conducting the inquiry—(1) Multiple institutions.* A joint research misconduct proceeding must be conducted consistent with § 93.305(e).

(2) *Person conducting the inquiry.* Institutions may convene committees of experts to conduct reviews at the inquiry stage to determine whether an investigation is warranted. The inquiry review may be done by a RIO or another designated institutional official in lieu of a committee, with the caveat that if needed, these individuals may utilize one or more subject matter experts to assist them in the inquiry.

(3) *Interviews.* Institutions may interview witnesses or respondents that would provide additional information for the institution's review.

(f) *Inquiry results—(1) Criteria warranting an investigation.* An investigation is warranted if:

(i) There is a reasonable basis for concluding that the allegation falls within the definition of research misconduct under this part and involves PHS-supported biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or research training, as provided in § 93.102; and

(ii) Preliminary information-gathering and fact-finding from the inquiry indicates that the allegation may have substance.

(2) *Findings of research misconduct.* Findings of research misconduct, including the determination of whether the alleged misconduct is intentional, knowing, or reckless, cannot be made at the inquiry stage.

(g) *Inquiry report.* (1) The institution must prepare a written report that meets the requirements of this section and § 93.309.

(2) If there is potential evidence of honest error or difference of opinion, the institution must note this in the inquiry report.

(3) The institution must provide the respondent an opportunity to review and comment on the inquiry report and attach any comments received to the report.

(h) *Time for completion.* (1) The institution must complete the inquiry within 90 days of its initiation unless circumstances warrant a longer period.

(2) If the inquiry takes longer than 90 days to complete, the inquiry report must document the reasons for exceeding the 90-day period.

§ 93.308 Notice of the results of the inquiry.

(a) *Notice to respondent.* The institution must notify the respondent whether the inquiry found that an

investigation is warranted. The notice must include a copy of the inquiry report and include a copy of or refer to this part and the institution's policies and procedures adopted under its research integrity assurance.

(b) *Notice to complainant.* The institution is not required to notify a complainant whether the inquiry found that an investigation is warranted. The institution may, but is not required to, provide relevant portions of the report to a complainant for comment. If an institution provides notice to one complainant in a case, it must provide notice, to the extent possible, to all complainants in the case.

§ 93.309 Reporting to ORI on the decision to initiate an investigation.

(a) Within 30 days of determining that an investigation is warranted, the institution must provide ORI with a copy of the inquiry report, which includes the following information:

- (1) The names, professional aliases, and positions of the respondent and complainant;
- (2) A description of the allegation(s) of research misconduct;
- (3) The PHS support, including, for example, grant numbers, grant applications, contracts, and publications listing PHS support;
- (4) The composition of the inquiry committee, if used, including name(s), position(s), and subject matter expertise;
- (5) Inventory of sequestered research records and other evidence and description of how sequestration was conducted;
- (6) Transcripts of any transcribed interviews;
- (7) Timeline and procedural history;
- (8) Any scientific or forensic analyses conducted;
- (9) The basis for recommending that the allegation(s) warrant an investigation;
- (10) The basis on which any allegation(s) do not merit an investigation;
- (11) Any comments on the inquiry report by the respondent or the complainant; and
- (12) Any institutional actions implemented, including communications with journals or funding agencies.

(b) The institution must provide the following information to ORI whenever requested:

- (1) The institutional policies and procedures under which the inquiry was conducted; and
 - (2) The research records and other evidence reviewed, and copies of all relevant documents.
- (c) Institutions must keep detailed documentation of inquiries to permit a

later assessment by ORI of the reasons why the institution decided not to investigate. Such documentation must be retained in accordance with § 93.318.

(d) In accordance with § 93.305(g), institutions must notify ORI of any special circumstances that may exist.

The Institutional Investigation

§ 93.310 Institutional investigation.

Institutions conducting research misconduct investigations must:

(a) *Time.* Begin the investigation within 30 days after deciding an investigation is warranted.

(b) *Notice to ORI.* Notify ORI of the decision to begin an investigation on or before the date the investigation begins and provide an inquiry report that meets the requirements of §§ 93.307 and § 93.309.

(c) *Notice to the respondent.* Notify the respondent in writing of the allegation(s) within a reasonable amount of time after determining that an investigation is warranted, but before the investigation begins.

(1) The institution must give the respondent written notice of any allegation(s) of research misconduct not addressed during the inquiry or in the initial notice of investigation within a reasonable amount of time of deciding to pursue such allegation(s).

(2) If the institution identifies additional respondents during the investigation, the institution may but is not required to conduct a separate inquiry for each new respondent. If any additional respondent(s) are identified during the investigation, the institution must notify them of the allegation(s) and provide them an opportunity to respond consistent with this subpart.

(3) While an investigation into multiple respondents can convene with the same investigation committee members, separate investigation reports and research misconduct determinations are required for each respondent.

(d) *Sequestration of records.* Obtain all research records and other evidence needed to conduct the investigation, consistent with § 93.305(a).

(e) *Documentation.* Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and other evidence relevant to reaching a decision on the merits of the allegation(s).

(f) *Ensuring a fair investigation.* Take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practicable, including participation of persons with appropriate scientific expertise who do

not have unresolved personal, professional, or financial conflicts of interest relevant to the investigation. An institution may use the same committee members from the inquiry in their subsequent investigation.

(g) *Interviews.* During the investigation, an institution must interview each respondent, complainant, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent.

(1) Interviews during the investigation must be recorded and transcribed.

(2) Any exhibits shown to the interviewee during the interview must be numbered and referred to by that number in the interview.

(3) The transcript of the interview must be made available to the relevant interviewee for correction.

(4) The transcript(s) with any corrections and numbered exhibits must be included in the institutional record of the investigation.

(5) The respondent must not be present during the witnesses' interviews but must be provided a transcript of the interview.

(h) *Multiple respondents.* Consider, consistent with § 93.305(d), the prospect of additional researchers being responsible for the alleged research misconduct.

(i) *Multiple institutions.* A research misconduct proceeding involving multiple institutions must be conducted consistent with § 93.305(e).

(j) *Pursue leads.* Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of additional instances of possible research misconduct, and continue the investigation to completion. If additional allegations are raised, the respondent(s) must be notified in writing of the additional allegations raised against them.

§ 93.311 Investigation time limits.

(a) *Time limit for completing an investigation.* An institution must complete all aspects of an investigation within 180 days of beginning it, including conducting the investigation, preparing the draft investigation report for each respondent, providing the draft report to each respondent for comment in accordance with § 93.312, and transmitting the institutional record including the final investigation report and decision by the Institutional Deciding Official to ORI in accordance with § 93.316.

(b) *Extension of time limit.* If unable to complete the investigation in 180 days, the institution must ask ORI for an extension in writing that includes the circumstances or issues warranting additional time.

(c) *Progress reports.* If ORI grants an extension, it may direct the institution to file periodic progress reports.

(d) *Investigation report.* If the investigation takes longer than 180 days to complete, the investigation report must include the reasons for exceeding the 180-day period.

§ 93.312 Opportunity to comment on the draft investigation report.

(a) The institution must give the respondent a copy of the draft investigation report and, concurrently, a copy of, or supervised access to, the research records and other evidence that the investigation committee considered or relied on. The respondent must submit any comments on the draft report to the institution within 30 days of receiving the draft investigation report.

(b) The institution may provide the complainant a copy of the draft investigation report or relevant portions of that report. The comments of the complainant, if any, must be submitted within 30 days of the date on which the complainant received the draft investigation report or relevant portions of it.

§ 93.313 Investigation report.

A final investigation report for each respondent must be in writing and include:

(a) Description of the nature of the allegation(s) of research misconduct, including any additional allegation(s) addressed during the research misconduct proceeding.

(b) Description and documentation of the PHS support, including, for example, any grant numbers, grant applications, contracts, and publications listing PHS support.

(c) Description of the specific allegation(s) of research misconduct for consideration in the investigation of the respondent.

(d) Composition of investigation committee, including name(s), position(s), and subject matter expertise.

(e) Inventory of sequestered research records and other evidence, except records the institution did not consider or rely on; and a description of how any sequestration was conducted during the investigation. This inventory must include manuscripts and funding proposals that were considered or relied on during the investigation.

(f) Transcripts of all interviews conducted, as described in § 93.310(g).

(g) Identification of the specific published papers, manuscripts submitted but not accepted for publication (including online publication), PHS funding applications, progress reports, presentations, posters, or other research records that allegedly contained the falsified, fabricated, or plagiarized material.

(h) Any scientific or forensic analyses conducted.

(i) If not already provided to ORI, the institutional policies and procedures under which the investigation was conducted.

(j) Any comments made by the respondent and complainant on the draft investigation report and the investigation committee's consideration of those comments.

(k) A statement for each separate allegation of whether the investigation committee recommends a finding of research misconduct.

(1) If the investigation committee recommends a finding of research misconduct for an allegation, the investigation report must, for that allegation:

(i) Identify the individual(s) who committed the research misconduct.

(ii) Indicate whether the research misconduct was falsification, fabrication, and/or plagiarism.

(iii) Indicate whether the research misconduct was committed intentionally, knowingly, or recklessly.

(iv) State whether the other requirements for a finding of research misconduct, as described in § 93.103, have been met.

(v) Summarize the facts and the analysis which support the conclusion and consider the merits of any explanation by the respondent.

(vi) Identify the specific PHS support.

(vii) Identify whether any publications need correction or retraction.

(2) If the investigation committee does not recommend a finding of research misconduct for an allegation, the investigation report must provide a detailed rationale.

(3) List of any current support or known applications or proposals for support that the respondent has pending with PHS and non-PHS Federal agencies.

§ 93.314 Decision by the Institutional Deciding Official.

The Institutional Deciding Official is responsible for making a final determination of research misconduct findings. This determination must be provided in a written decision that includes:

(a) Whether the institution found research misconduct and, if so, who committed the misconduct; and

(b) A description of relevant institutional actions taken or to be taken.

§ 93.315 Institutional appeals.

(a) If a respondent appeals an institution's finding(s) of research misconduct or institutional actions, the institution must promptly notify ORI.

(b) If the institution has not transmitted its institutional record to ORI in accordance with § 93.316 prior to the appeal, the institution must wait until the appeal is concluded to transmit its institutional record. The institution must ensure that the complete record of the appeal is included in the institutional record consistent with § 93.220(a)(5).

(c) If the institution has transmitted its institutional record to ORI in accordance with § 93.316 prior to the appeal, the institution must provide ORI a complete record of the appeal once the appeal is concluded.

§ 93.316 Transmittal of the institutional record to ORI.

After the Institutional Deciding Official has made a final determination of research misconduct findings in accordance with § 93.314, the institution must transmit the institutional record to ORI. The institutional record must be consistent with § 93.220 and logically organized.

§ 93.317 Completing the research misconduct process.

(a) ORI expects institutions to carry inquiries and investigations through to completion and to pursue diligently all significant issues and credible allegations of research misconduct. Institutions must notify ORI in advance if the institution plans to close a research misconduct proceeding at the assessment, inquiry, investigation, or appeal stage on the basis that the respondent has admitted to committing research misconduct or a settlement with the respondent has been reached.

(b) A respondent's admission of research misconduct must be made in writing and signed by the respondent. An admission must specify the falsification, fabrication, and/or plagiarism that occurred and which research records were affected. The admission statement must meet all elements required for a research misconduct finding under § 93.103 and must be provided to ORI before the institution closes its research misconduct proceeding. The institution must also provide a statement to ORI

describing how it determined that the scope of the misconduct was fully addressed by the admission and confirmed the respondent's culpability.

(c) After consulting with the institution on its basis for closing a case under paragraph (a) of this section, ORI may conduct an oversight review of the institution's handling of the case and take appropriate action including:

- (1) Approving or conditionally approving closure of the case;
- (2) Directing the institution to complete its process;
- (3) Directing the institution to address deficiencies in the institutional record;
- (4) Referring the matter for further investigation by HHS; or
- (5) Taking a compliance action.

Other Institutional Responsibilities

§ 93.318 Retention and custody of the institutional record and all sequestered evidence.

(a) *Maintenance of institutional record and all sequestered evidence.* An institution must maintain the institutional record and all sequestered evidence including physical objects (regardless of whether the evidence is part of the institutional record) in a secure manner for seven years after completion of the proceeding or the completion of any HHS proceeding involving the research misconduct allegation under subparts D and E of this part, whichever is later, unless custody has been transferred to HHS under paragraph (b) of this section or ORI advises otherwise in writing.

(b) *Provision for HHS custody.* On request, institutions must transfer custody, or provide copies, to HHS of the institutional record or any component of the institutional record and any sequestered evidence (regardless of whether the evidence is included in the institutional record) for ORI to conduct its oversight review, develop the administrative record, or present the administrative record in any proceeding under subparts D and E of this part.

§ 93.319 Institutional standards of conduct.

Institutions may have standards of conduct different from the standards for research misconduct under this part. ORI findings of research misconduct or HHS settlements of research misconduct proceedings, or the absence thereof, do not affect institutional findings or actions taken based on an institution's standards of conduct.

Subpart D—Responsibilities of the U.S. Department of Health and Human Services

General Information

§ 93.400 General statement of ORI authority.

(a) *ORI review.* ORI may respond directly to any allegation of research misconduct at any time before, during, or after an institution's response to the matter. The ORI response may include but is not limited to:

- (1) Conducting allegation assessments;
- (2) Determining independently whether jurisdiction exists under this part;
- (3) Forwarding allegations of research misconduct to the appropriate institution or HHS component for inquiry or investigation;
- (4) Requesting clarification or additional information, documentation, research records, or other evidence as necessary from an institution or its members or other persons or sources to carry out ORI's review;
- (5) Notifying or requesting assistance and information from PHS funding components, other affected Federal and state offices and agencies, or institutions;
- (6) Reviewing the institutional record and directing the institution to address deficiencies or additional allegations in the institutional record;
- (7) Making a finding of research misconduct; and
- (8) Taking actions as necessary to protect the health and safety of the public, to promote the integrity of PHS-supported biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or research training, or to conserve public funds.

(b) *ORI assistance to institutions.* ORI may:

- (1) Provide information, technical assistance, and procedural advice to institutional officials as needed regarding an institution's research misconduct proceedings and the sufficiency of the institutional record; and
- (2) Issue guidance and provide information to support institutional implementation of and/or compliance with the requirements of this part.

(c) *Review of institutional research integrity assurances.* ORI will review institutional research integrity assurances and policies and procedures for compliance with this part.

(d) *Institutional compliance.* ORI may make findings and impose ORI compliance actions related to an

institution's compliance with this part and with its policies and procedures, including an institution's participation in research misconduct proceedings.

§ 93.401 Interaction with other entities and interim actions.

(a) ORI may notify and consult with other entities, including government funding agencies, institutions, journals, publishers, and editors, at any time if those entities have a need to know about or have information relevant to a research misconduct proceeding.

(b) If ORI believes that a criminal or civil fraud violation may have occurred, it shall promptly refer the matter to the Department of Justice (DOJ), the HHS Office of Inspector General (OIG), or other appropriate investigative body.

(c) ORI may provide expertise and assistance to the DOJ, OIG, PHS offices, other Federal offices, and state or local offices involved in investigating or otherwise pursuing research misconduct allegations or related matters.

(d) ORI may notify affected PHS offices and funding components at any time to enable them to take appropriate interim actions.

(e) The information provided will not be disclosed as part of the peer review and advisory committee review processes but may be used by the Secretary in making decisions about the award or continuation of funding.

(f) ORI may refer a research misconduct matter to the SDO at any time for consideration under the HHS suspension and debarment regulations. ORI may provide technical assistance and share other information that the SDO needs to know to consider the referred matter.

Research Misconduct Issues

§ 93.402 ORI allegation assessments.

(a) When ORI receives an allegation, it may conduct an assessment or refer the matter to the relevant institution for an assessment, inquiry, or other appropriate actions.

(b) If ORI conducts an assessment and determines an inquiry is warranted, it forwards the matter to the appropriate institution or HHS component.

(c) If ORI conducts an assessment and determines an inquiry is not warranted, it will close the case and forward the allegation in accordance with paragraph (d) in this section.

(d) ORI may refer allegations that do not fall within the jurisdiction of this part to the appropriate HHS component, Federal or state agency, institution, organization, journal, or other appropriate entity.

§ 93.403 ORI review of research misconduct proceedings.

(a) In conducting its review of research misconduct proceedings, ORI will:

- (1) Determine whether this part applies;
- (2) Consider the institutional record and determine whether the institutional record is sufficient, provide instructions to the institution(s) if ORI determines that revisions are needed or additional allegations of research misconduct should be addressed, and require institutions to provide the respondent with an opportunity to respond to information or allegations added to the institutional record;

(3) Determine whether the institution conducted the proceedings in a timely and fair manner in accordance with this part with sufficient thoroughness, objectivity, and competence to support the conclusions; and

(4) After reviewing in accordance with paragraphs (a)(1) through (3) of this section, determine whether to close the case without further action or proceed with the case.

(b) If ORI determines to proceed with the case, ORI will:

(1) Obtain additional information or materials from the institution, the respondent, complainants, or other sources, as needed;

(2) Conduct additional analyses, as needed;

(3) Provide the respondent the opportunity to access the institutional record, any additional information provided to ORI while the case is pending before ORI, and any analysis or additional information generated or obtained by ORI;

(4) Provide the respondent the opportunity to submit information to ORI;

(5) Allow the respondent and the respondent's attorney, if represented, to meet virtually or in person with ORI to discuss the information that the respondent has provided to ORI;

(6) Have ORI's virtual or in-person meeting(s) with the respondent transcribed and provide a copy of the transcript to the respondent for review and suggested correction;

(7) Close the administrative record following paragraphs (b)(3) through (6) of this section;

(8) Provide the respondent the opportunity to access the complete administrative record; and

(9) Take any other actions necessary to complete ORI's review of the research misconduct proceedings.

§ 93.404 Findings of research misconduct and proposed HHS administrative actions.

(a) After completing its review of the administrative record, ORI may:

- (1) Close the case without a separate ORI finding of research misconduct;
- (2) Make findings of research misconduct and propose and take HHS administrative actions based on the administrative record; or
- (3) Seek to settle the case.

(b) The lack of an ORI finding of research misconduct does not overturn an institution's determination that the conduct constituted professional or research misconduct warranting remediation under the institution's policy.

§ 93.405 Notifying the respondent of findings of research misconduct and proposed HHS administrative actions.

(a) When ORI makes a finding of research misconduct or proposes HHS administrative actions, it notifies the respondent in a charge letter. The charge letter:

(1) Includes ORI's findings of research misconduct, including the basis for such findings in the administrative record, and any proposed HHS administrative actions;

(2) Advises the respondent how to access the administrative record; and

(3) Informs the respondent of the opportunity to contest the findings and proposed HHS administrative actions under subpart E of this part.

(b) ORI sends the charge letter by certified mail, private delivery service, or electronic mail or other electronic means to the last known address of the respondent or the last known principal place of business of the respondent's attorney, if represented.

§ 93.406 Final HHS actions.

Unless the respondent contests the findings and/or the proposed HHS administrative actions contained in the charge letter within the 30-day period prescribed in § 93.501(a), the ORI findings and HHS administrative actions are final.

§ 93.407 HHS administrative actions.

(a) Based on the administrative record, HHS may impose administrative actions that include but are not limited to:

- (1) Clarification, correction, or retraction of the research record.
- (2) Letter(s) of reprimand.
- (3) Imposition of special certification or research integrity assurance requirements to ensure compliance with applicable regulations or terms of HHS grants, contracts, or cooperative agreements.

(4) Suspension of award activities under, or termination of, a PHS grant, contract, or cooperative agreement.

(5) Restriction on specific activities or expenditures under an active PHS grant, contract, or cooperative agreement.

(6) Special review of all the respondent's requests for PHS funding.

(7) Imposition of supervision requirements on a PHS grant, contract, or cooperative agreement.

(8) Certification of attribution or authenticity in all requests for support and reports to PHS.

(9) Prohibition of the respondent in participating in any advisory capacity with the PHS.

(10) Recommending that the relevant agency take adverse personnel action(s), if the respondent is a Federal employee, in compliance with relevant Federal personnel policies and laws.

(b) In connection with research misconduct findings, HHS also may seek to recover PHS funds spent supporting activities involving research misconduct.

(c) Any authorized HHS component may impose, administer, or enforce administrative actions separately or in coordination with other HHS components, including, but not limited to ORI, OIG, and the PHS funding component.

(d) HHS administrative actions under this part do not include suspension or debarment. Regardless of whether HHS administrative actions are imposed under this part, HHS may pursue suspension and debarment under the HHS suspension and debarment regulations.

§ 93.408 Mitigating and aggravating factors in HHS administrative actions.

The purpose of HHS administrative actions is remedial. The appropriate administrative action is commensurate with the seriousness of the misconduct and the need to protect the health and safety of the public, promote the integrity of the PHS-supported research and research process, and conserve public funds. ORI considers the following aggravating and mitigating factors in determining appropriate HHS administrative actions and their terms. The existence or nonexistence of any factor is not determinative.

(a) *Knowing, intentional, or reckless.* Were the respondent's actions knowing or intentional or were the actions reckless?

(b) *Pattern.* Was the research misconduct an isolated event or part of a continuing or prior pattern of dishonest conduct?

(c) *Impact.* Did the misconduct have significant impact on the proposed or

reported research record, research subjects, other researchers, institutions, or the public health or welfare?

(d) *Acceptance of responsibility.* Has the respondent accepted responsibility for the misconduct by:

- (1) Admitting the conduct;
- (2) Cooperating with the research misconduct proceedings;
- (3) Demonstrating remorse and awareness of the significance and seriousness of the research misconduct; and
- (4) Taking steps to correct or prevent the recurrence of the research misconduct?

(e) *Failure to accept responsibility.* Does the respondent blame others rather than accepting responsibility for the actions?

(f) *Retaliation.* Did the respondent retaliate against complainants, witnesses, committee members, or other individuals?

(g) *Continued risk to PHS funding.* Does the respondent demonstrate responsible stewardship of research resources?

(h) *Other factors.* Are other factors relevant to the circumstances of a particular case?

§ 93.409 Settlement of research misconduct proceedings.

(a) HHS may settle a research misconduct proceeding at any time it determines that settlement is in the best interests of the Federal Government and the public health or welfare.

(b) Settlement agreements are publicly available, regardless of whether ORI made a finding of research misconduct.

(c) A settlement agreement precludes the respondent from contesting any ORI findings of research misconduct, HHS administrative actions, or ORI's jurisdiction in handling the research misconduct proceeding.

§ 93.410 Final HHS action with no settlement or finding of research misconduct.

When the final HHS action does not result in a settlement or finding of research misconduct, ORI may provide written notice to the respondent, the relevant institution, the complainant, and HHS officials.

§ 93.411 Final HHS action with a settlement or finding of research misconduct.

When a final HHS action results in a settlement or research misconduct finding(s), ORI may:

(a) Provide final notification of any research misconduct findings and HHS administrative actions to the respondent, the relevant institution, and appropriate HHS officials.

(b) Provide final notification of any research misconduct findings and HHS administrative actions to the complainant(s).

(c) Send a notice to the relevant journal, publisher, data repository, or other similar entity identifying publications or research records that require correction or retraction.

(d) Publish notice of the research misconduct findings.

(e) Notify the respondent's current employer if the employer is an institution subject to this part.

Institutional Compliance Issues

§ 93.412 Making decisions on institutional noncompliance.

ORI may determine an institution is not compliant with this part if the institution does not implement and follow the requirements of this part and its own research integrity assurance. In making this decision, ORI may consider, but is not limited to the following factors:

(a) Failure to establish and comply with policies and procedures under this part;

(b) Failure to respond appropriately when allegations of research misconduct arise;

(c) Failure to report to ORI all investigations and findings of research misconduct under this part;

(d) Failure to cooperate with ORI's review of research misconduct proceedings; or

(e) Other actions or omissions that have a material, adverse effect on reporting and responding to allegations of research misconduct.

§ 93.413 ORI compliance actions.

(a) If ORI determines an institution is not compliant with this part, it may take a compliance action against the institution.

(b) If ORI determines an institution is not compliant with this part, ORI may take any or all of the following compliance actions:

(1) Require the institution to accept and/or implement technical assistance provided by ORI.

(2) Issue a letter of reprimand.

(3) Require the institution to take corrective actions.

(4) Place the institution on special review status. For a designated period, ORI will closely monitor the institution's activities for compliance with this part. Monitoring may consist of, but is not limited to, compliance reviews and/or audits.

(5) Direct that research misconduct proceedings be handled by HHS.

(6) Any other action appropriate to the circumstances.

(c) If an institution fails to comply with the requirements of this part, ORI may refer the institution to the SDO for consideration under the HHS suspension and debarment regulations.

(d) If the institution's actions constitute a substantial or recurrent failure to comply with this part, ORI may revoke the institution's research integrity assurance under § 93.301 or § 93.303.

(e) ORI may make public any findings of institutional noncompliance and ORI compliance actions.

Disclosure of Information

§ 93.414 Notice.

(a) ORI may disclose information to other persons for the purpose of providing or obtaining information about research misconduct as permitted under the Privacy Act, 5 U.S.C. 552a and ORI's system of records notice for research misconduct proceedings.

(b) ORI may disclose or publish a notice regarding settlements, ORI findings of research misconduct, and HHS administrative actions, and release or withhold information as permitted by the Privacy Act and the Freedom of Information Act, 5 U.S.C. 552.

Subpart E—Opportunity To Contest ORI Findings of Research Misconduct and Proposed HHS Administrative Actions

General Information

§ 93.500 General policy.

(a) This subpart provides a respondent an opportunity to contest ORI findings of research misconduct and/or proposed HHS administrative actions included in a charge letter.

(b) A respondent may contest ORI's research misconduct findings and proposed HHS administrative actions by filing a notice of appeal with an Administrative Law Judge (ALJ) at the DAB.

(c) Based on the administrative record, the ALJ shall rule on whether ORI's research misconduct findings and any proposed HHS administrative actions are reasonable and not based on a material error of law or fact. The ALJ's ruling constitutes a recommended decision to the Assistant Secretary for Health (ASH) in accordance with § 93.511(b).

(d) A respondent must exhaust all available administrative remedies under this subpart before seeking judicial review of ORI's findings and/or HHS administrative actions. The contested findings and/or administrative actions shall be inoperative while the

respondent is pursuing administrative remedies under this subpart.

Process for Contesting Research Misconduct Findings and/or Proposed HHS Administrative Actions

§ 93.501 Notice of appeal.

(a) *Time to file.* A respondent may contest ORI's findings of research misconduct and/or proposed HHS administrative actions by filing a notice of appeal within 30 days of receipt of the charge letter provided under § 93.405.

(b) *Form of a notice of appeal.* The respondent's notice of appeal must be:

- (1) In writing;
- (2) Signed by the respondent or by the respondent's attorney; and
- (3) Submitted to the DAB Chair through the DAB electronic filing system, with a copy sent to ORI by certified mail, electronic mail, or other equivalent (*i.e.*, with a verified method of delivery).

(c) *Contents of a notice of appeal.* The notice of appeal must:

- (1) Admit or deny each ORI finding of research misconduct and each factual assertion made in support of each finding;
- (2) Accept or challenge each proposed HHS administrative action;
- (3) Provide detailed, substantive reasons for each denial or challenge with references to the administrative record;
- (4) Identify any legal issues or defenses that the respondent intends to raise during the proceeding, with references to the administrative record; and
- (5) Identify any mitigating factors in the administrative record.

§ 93.502 Appointment of the Administrative Law Judge.

(a) Within 30 days of receiving a notice of appeal, the DAB Chair, in consultation with the Chief ALJ, must designate an ALJ to determine whether the notice of appeal is timely filed and within the ALJ's jurisdiction under this subpart. If the appeal is determined to be timely and within the ALJ's jurisdiction, the ALJ shall decide the reasonableness of the ORI research misconduct findings and proposed HHS administrative actions in accordance with this subpart. The ALJ shall dismiss an appeal if it is untimely or not within the ALJ's jurisdiction under this subpart.

(b) No ALJ may serve in any proceeding under this subpart if they have any actual or apparent conflict of interest, bias, or prejudice that might reasonably impair their objectivity in the proceeding.

(c) Any party to the proceeding may request the ALJ to withdraw from the proceeding because of an actual or apparent conflict of interest, bias, or prejudice under paragraph (b) of this section. The motion to disqualify must be timely and state with particularity the grounds for disqualification. The ALJ may rule upon the motion or certify it to the Chief ALJ for decision. If the ALJ rules upon the motion, either party may appeal the decision to the Chief ALJ.

(d) An ALJ must withdraw from any proceeding for any reason found by the ALJ or Chief ALJ to be disqualifying.

§ 93.503 Filing of the administrative record.

(a) For appeals that are not dismissed under § 93.502(a), ORI will file the administrative record for the appeal.

(b) The ALJ's review will be based on the administrative record.

(c) The parties have no right to supplement the administrative record.

§ 93.504 Standard of review.

(a) The ALJ shall review the administrative record to determine whether the ORI research misconduct findings and proposed HHS administrative actions reflected in the charge letter are reasonable and not based on a material error of law or fact.

(b) The ALJ may permit the parties to file briefs making legal and factual arguments based on the administrative record.

§ 93.505 Rights of the parties.

(a) The parties to the appeal are the respondent and ORI. The investigating institution is not a party to the case unless it is a respondent.

(b) Except as otherwise limited by this subpart, the parties may:

- (1) Be accompanied, represented, and advised by an attorney;
- (2) Participate in any case-related conference held by the ALJ; and
- (3) File motions or briefs in writing before the ALJ.

(c) The parties have no right to discovery before the ALJ.

§ 93.506 Authority of the Administrative Law Judge.

(a) The ALJ assigned to the case must conduct a fair and impartial proceeding, avoid unnecessary delay, maintain order, and assure that a complete and accurate record of the proceeding is properly made. The ALJ is bound by, and may not refuse to follow or find invalid, all Federal statutes and regulations, Secretarial delegations of authority, and applicable HHS policies, as provided in paragraph (c)(5) of this section.

(b) Subject to review as provided elsewhere in this subpart, the ALJ may:

(1) Hold conferences with the parties to identify or simplify the issues, or to consider other matters that may aid in the prompt disposition of the proceeding;

(2) Rule on motions and other procedural matters;

(3) Except for the respondent's notice of appeal, modify the time for the filing of any document required or authorized under the rules in this subpart;

(4) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(5) Regulate the course of the appeal and the conduct of representatives and parties; and

(6) Take action against any party for failing to follow an order or procedure or for disruptive conduct.

(c) The ALJ does not have the authority to:

(1) Enter an order in the nature of a directed verdict;

(2) Compel settlement negotiations;

(3) Enjoin any act of the Secretary;

(4) Review suspension or proposed debarment;

(5) Find invalid or refuse to follow Federal statutes or regulations, Secretarial delegations of authority, or HHS policies;

(6) Authorize the parties to engage in discovery; and

(7) Modify the time for filing the respondent's notice of appeal.

(d) The Federal Rules of Evidence and the Federal Rules of Civil Procedure do not govern the proceedings under this subpart.

§ 93.507 Ex parte communications.

(a) No party, attorney, or other party representative may communicate ex parte with the ALJ on any matter at issue in a case, unless both parties have notice and an opportunity to participate in the communication.

(b) If an ex parte communication occurs, the ALJ will disclose it to the other party and offer the other party an opportunity to comment.

(c) The provisions of this section do not apply to communications between an employee or contractor of the DAB and the ALJ.

§ 93.508 Filing, format, and service.

(a) *Filing.* (1) Unless the ALJ provides otherwise, all submissions required or authorized to be filed in the proceeding must be filed with the ALJ.

(2) Submissions are considered filed when they are filed with the DAB according to the DAB's filing guidance.

(b) *Format.* (1) The ALJ may designate the format for copies of

nondocumentary materials such as videotapes, computer disks, or physical evidence. This provision does not apply to the charge letter or other written notice provided under § 93.405.

(2) Every submission filed in the proceeding must include the title of the case, the docket number, and a designation of the nature of the submission.

(3) Every submission filed in the proceeding must be signed by and contain the address and telephone number of the party on whose behalf the document or paper was filed, or the attorney of record for the party.

(c) *Service.* Service of a submission on other parties is accomplished by filing the submission with the ALJ through the DAB electronic filing system.

§ 93.509 Filing motions.

(a) Parties must file all motions and requests for an order or ruling with the ALJ, serve them on the other party, state the nature of the relief requested, provide the legal authority relied upon, and state the facts alleged in support of the motion or request.

(b) All motions must be in writing.

(c) Within 10 days after being served with a motion, or other time as set by the ALJ, a party may file a response to the motion. The moving party may not file a reply to the response unless allowed by the ALJ.

(d) The ALJ may not grant a motion before the time for filing a response has expired, except with the parties' consent. However, the ALJ may overrule or deny any motion without awaiting a response.

(e) The ALJ must make a reasonable effort to dispose of all motions promptly.

§ 93.510 Conferences.

(a) The ALJ must schedule an initial conference with the parties within 30 days of the DAB Chair's assignment of the case.

(b) The ALJ may use the initial conference to discuss:

(1) Identification and simplification of the issues, specification of genuine disputes of fact and their materiality to the ORI findings of research misconduct, and any proposed HHS administrative actions;

(2) Identification of material legal issues and any need for briefing;

(3) Scheduling dates for the filing of briefs based on the administrative record; and

(4) Other matters that may encourage the fair, just, and prompt disposition of the proceedings.

(c) The ALJ may schedule additional conferences as appropriate, upon reasonable notice to or request of the parties.

(d) All conferences will be recorded with copies provided to the parties upon request.

(e) Whenever possible, the ALJ shall memorialize in writing any oral rulings within 10 days after a conference is held.

§ 93.511 The Administrative Law Judge's ruling.

(a) Based on the administrative record, the ALJ shall issue a ruling in writing within 60 days after the last submission by the parties in the case,

setting forth whether ORI's research misconduct findings and proposed HHS administrative actions reflected in the charge letter are reasonable and not based on a material error of law or fact. If the ALJ is unable to meet the 60-day deadline, the ALJ must set a new deadline and promptly notify the parties. The ALJ shall serve a copy of the ruling upon the parties and the ASH.

(b) The ruling of the ALJ constitutes a recommended decision to the ASH. The ASH may review the ALJ's recommended decision and adopt, modify, or reject it (in whole or in part) as needed to ensure that the decision is reasonable and not based on a material error of law or fact. Within 30 days after service of the ALJ's recommended decision, the ASH shall notify the parties of the ASH's intent to review or not to review the ALJ's recommended decision. If the ASH does not provide notice of intent within the 30-day period or notifies the parties that the ASH does not intend to review the ALJ's recommended decision, the ALJ's recommended decision shall become final. An ALJ's recommended decision that becomes final in that manner or the ASH's decision after review constitutes the final HHS action on both ORI's findings of research misconduct and any HHS administrative actions.

Dated: September 9, 2024.

Xavier Becerra,

Secretary.

[FR Doc. 2024-20814 Filed 9-12-24; 8:45 am]

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Part V

Department of Homeland Security

Coast Guard

46 CFR Parts 10, 401, and 402

Great Lakes Pilotage Modernization; Final Rule

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****46 CFR Parts 10, 401, and 402****[Docket No. USCG–2022–0025]****RIN 1625–AC79****Great Lakes Pilotage Modernization****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

SUMMARY: The Coast Guard is amending certain Great Lakes Pilotage regulatory requirements to align with current Coast Guard and U.S. pilot association operations and pilotage practices. This final rule clarifies the different phases of training and types of registrations for Pilots who work on the Great Lakes, eliminates outdated practices and redundant requirements, and adds much needed structure regarding the billing dispute process.

DATES: This final rule is effective October 17, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to www.regulations.gov, type USCG–2022–0025 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Vincent Berg, Coast Guard; telephone 202–906–0835, email vincent.f.berg@uscg.mil.

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I. Abbreviations

The Act The Great Lakes Pilotage Act of 1960
 CFR Code of Federal Regulations
 DHS Department of Homeland Security
 Director Director, Great Lakes Pilotage

Form CG–4509 Application for Registration as a United States Registered Pilot
 FR Federal Register
 GLPAC Great Lakes Pilotage Advisory Committee
 GLPMS Great Lakes Pilotage Management System
 GT Gross tonnage
 ID Identification
 MMC Merchant Mariner Credential
 MOU Memorandum of Understanding
 NPRM Notice of proposed rulemaking
 NAICS North American Industry Classification System
 OMB Office of Management and Budget
 REC Regional Exam Center
 § Section
 SME Subject matter expert
 STCW Standards of Training, Certification, and Watchkeeping for Seafarers
 TWIC Transportation Workers Identification Credential
 U.S.C. United States Code

II. Basis and Purpose

The legal basis of this rulemaking is Title 46 of the United States Code (U.S.C.), Chapter 93,¹ which requires each foreign vessel and each vessel of the United States operating “on register,” meaning United States vessels engaged in foreign trade, to use United States or Canadian Pilots while transiting the United States waters of the St. Lawrence Seaway and the Great Lakes system.² For U.S. Great Lakes Pilots, 46 U.S.C. 9303(a) requires the Secretary to prescribe, by regulation, standards of competency to be met by each applicant for registration as a Great Lakes Pilot. Additionally, sections 9303(c) and (d) authorize the Secretary to prescribe regulations establishing the validity period of Great Lakes Pilot’s registration and other conditions for service respectively. The Secretary’s duties and authority under 46 U.S.C. Chapter 93 have been delegated to the Coast Guard.³

The purpose of this final rule is to update the Great Lakes pilotage regulations in title 46 of the Code of Federal Regulations (CFR) parts 401 and 402 and part 10 of the Merchant Marine Officers and Seamen regulations to reflect the current pilotage terms and practices used by the Coast Guard and U.S. pilot association operations. We proposed these changes in a notice of proposed rulemaking (NPRM) for this final rule, published November 21, 2023 (88 FR 81294). While the regulations in the current CFR do not conflict with our current practices, they do not fully reflect the current Apprentice Pilot

training requirements and titles for Pilot progression. Accordingly, the Coast Guard updates the current CFR as follows:

1. Redefines the different phases of Pilot registration, which generally follow this progression: “Applicant,” “Applicant Trainee,” “Apprentice Pilot,” “Limited Registration,” “Full Registration,” and “Temporary Registered Pilot”;
2. Adds “marine accident” to the definitions section to clarify a Pilot’s reporting requirements;
3. Clarifies training benchmarks to ensure registration of qualified mariners and to help retain experienced U.S. Registered Pilots;
4. Aligns medical requirements and Radar Observer training requirements for U.S. Registered Pilots with the Merchant Mariner Credential (MMC) and manning regulations in 46 CFR parts 10–15;
5. Clarifies the pilotage billing dispute process with respect to when a vessel is and is not liable for charges; and
6. Removes outdated provisions, including dates and terms, from the Transportation Workers Identification Credential (TWIC), the foreign language requirements for navigation, the 1-year time limit for applicants to complete training, and other regulations that were written when both the Department of Commerce and the Coast Guard had regulatory authority over U.S. pilotage services.

In addition, this final rule capitalizes endorsements for uniformity in the regulations and corrects some terminology for gender neutrality.

The Coast Guard believes that the updated registration process in this rule ensures that regulations reflect current training practices, while keeping within the statutory mandate to prescribe standards of competency in 46 U.S.C. 9303(a). The updates also align with the program’s goals of promoting competent, safe, efficient, and reliable pilotage service throughout the Great Lakes and St. Lawrence Seaway, promoting commerce, and protecting the marine environment.

III. Background

Chapter 93 of Title 46 of the U.S.C. establishes a system of compulsory pilotage on the Great Lakes, requiring that each vessel of the United States operating “on register,” meaning United States vessels engaged in any commercial activity, and all foreign vessels, use a United States or Canadian Registered Pilot when operating on the Great Lakes.

Great Lakes Pilots use in-depth local knowledge, seasoned navigational and

¹ 46 U.S.C. 9301–9308.

² 46 U.S.C. 9302(a)(1).

³ Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.4, paragraph II (92)(f). See <https://dhsconnect.dhs.gov/org/comp/mgmt/policies/Delegations/00170.1.pdf>.

ship handling expertise, and informed independent judgment to guide both U.S. and foreign oceangoing commercial vessels safely in and out of Great Lakes' ports and waterways. Congress made pilotage use compulsory in 1960, following the 1959 opening of the St. Lawrence Seaway that led to a surge in shipping traffic. To ensure navigational safety for this new class of ocean-going vessels operating on the Great Lakes, Congress enacted the Great Lakes Pilotage Act of 1960 (hereafter "the Act").⁴

The regulations for Pilot application and registration appear in 46 CFR parts 401 and 402. These regulations require that mariners applying for Pilot registration meet minimum requirements and qualifications and file an application form with the Director. While the Coast Guard is responsible for publishing an annual rule that sets pilotage rates, 46 CFR parts 401 and 402 have not been otherwise substantively updated since the early 1960s. As a result, these regulations are not in alignment with current practices by the Coast Guard and the pilotage industry operating on the Great Lakes.

In 2017, the Coast Guard asked the Great Lakes Pilotage Advisory Committee (GLPAC) to help the Coast Guard identify existing regulations, guidance, and collections of information (that fall within the scope of the Committee's charter) for possible repeal, replacement, or modernization.⁵ In March 2018, GLPAC made several unanimous recommendations to update or remove outdated regulatory requirements from 46 CFR parts 401 and 402.⁶ In a September 10, 2018, meeting, GLPAC also unanimously recommended that the Coast Guard explore deadlines for contesting pilotage service invoices in part 402.⁷ The GLPAC recommendations are strongly supported by the Pilots who provide the pilotage services, ports and cargo agents who rely on the pilotage services, and the shippers who pay for the pilotage services.

In addition, the Coast Guard has identified several other areas for revision. Ambiguities in regulatory text have caused confusion for Pilots regarding training and registration

instructions. In this rulemaking, the Coast Guard clarifies the different phases of training and types of registrations for Pilots who work on the Great Lakes. This includes clarifying the differences between Temporary and Limited Registration, and which Pilots are eligible for those registrations.

This rule affects approximately 51 United States Registered Pilots, 9 Apprentice Pilots, and 3 Temporary Registered Pilots on the Great Lakes, as well as 3 district pilot associations, and the owners and operators of approximately 293 vessels opting to use those Pilots or statutorily required to use those Pilots.

IV. Discussion of Comments and Changes

The Coast Guard received four relevant comments on the proposed rule and made three changes from the proposed regulatory text as a result.

The first of these changes is to 46 CFR 401.420(c). Originally, this section relieved the owner of a vessel for liability for charges incurred during an interruption or detention caused by ice or weather, when the vessel Master and Pilot agreed that the interruption was necessary. One commenter sought guidance on the required mutual determination between the vessel Master and Pilot. The Coast Guard agrees that this language creates a point of friction that may cause issues on board. For that reason, we are removing the proposed language "as determined by the vessel Master and the United States Registered Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot authorized to provide pilotage services to the vessel." Pursuant to 46 U.S.C. 9302(a), in both designated and undesignated waters, the law provides that navigational decisions are always subject to the customary authority of the Master. As such, the decision to delay sailing should be made by the vessel Master with the advice of the United States Registered Pilot in consideration of all prevailing circumstances. We trust these experienced mariners to make the correct choice and do not want to insert ourselves in time-sensitive decisions on the bridge while a vessel is underway. As such, no joint agreement needs to be made or proved. This change thus also clarifies liability determinations under this paragraph, as the vessel Master's conclusion regarding the cause of the interruption is a critical factor for whether the exception to liability under 46 CFR 401.420(c) applies.

The second change from the proposed regulatory text is in 46 CFR 10.302(b). The existing language required that

"Medical examinations for Great Lakes Pilots must be conducted by a *licensed medical doctor* in accordance with the physical exam requirements in 46 CFR 402.210" (emphasis added). The existing language of 46 CFR 402.210, in turn, reiterated the requirement that the examination be conducted by a licensed medical doctor. In the proposed rule, we discussed how only Great Lakes Pilots were limited to have their physical examinations performed by a licensed medical doctor (88 FR at 81305). We proposed to modify 46 CFR 402.210 to align the Great Lakes Pilots' medical requirements with the less burdensome merchant mariner requirements, which allowed medical examination to be performed, witnessed, or reviewed by a licensed medical doctor, licensed physician assistant, licensed nurse practitioner, or a designated medical examiner. We neglected, however, to also propose removing the licensed medical doctor requirement for Great Lakes Pilots contained in 46 CFR 10.302(b).

Two commenters, who represent nurse practitioners and physician assistants, requested that we modify 46 CFR 10.302(b) to remove the requirement that the exam be conducted by a licensed medical doctor for Great Lakes Pilots. We agree. In the proposed rule, we overlooked the mention of Great Lakes pilotage medical requirements in 10.302(b). With this final rule, we remove the language specific to Great Lakes Pilots medical examination from 10.302(b). This additional change ensures Great Lakes Pilots will follow the same medical examination requirements that apply to other mariners in 10.302(b) ("Any required test, exam, or demonstration must have been performed, witnessed, or reviewed by a licensed medical doctor, licensed physician assistant, licensed nurse practitioner, or a designated medical examiner"). Updating this regulatory text fully implements the change we proposed in the proposed rule for medical examination requirements in 402.210. Nurse practitioners and physician assistants both possess the requisite skill needed to conduct this kind of physical exam. Allowing them to provide Pilots with this service makes the application process more efficient and fully aligns with the Coast Guard medical regulations for all other credentialed mariners. To accommodate this change, the Coast Guard will make corresponding edits to 46 CFR 402.210 to remove the requirement that Great Lakes Pilots can only use a licensed medical doctor.

⁴ See The Great Lakes Pilotage Act of 1960, Public Law 86-555, June 30, 1960, as amended (codified at 46 U.S.C. 9301 *et seq.*).

⁵ 82 FR 34909, July 27, 2017.

⁶ Reg Reform Sub-Committee Teleconference Minutes (Mar. 5, 2018) (available at <https://www.regulations.gov/document/USCG-2022-0025-0002>).

⁷ GLPAC 2018 Annual Meeting Transcript at p. 171 (Sept. 10, 2018) (available at <https://www.regulations.gov/document/USCG-2022-0025-0003>).

In addition to the above, we are changing the proposed definition of “Temporary Registered Pilot” to remove the requirement that a pilot association must first request a retired Pilot’s services before the Pilot can begin the process of acquiring a Temporary Pilot Identification (ID) Card. This change is administrative in nature and is intended to allow retired Pilots to become certified as Temporary Registered Pilots before a District requests their services. This is intended to enhance safety and create a system where Temporary Registered Pilots are immediately available when unexpected demand requires an extra Pilot. This aligns with the Director’s responsibility and authority in 46 CFR 401.720 to maintain safety and to ensure sufficient Pilot capacity to facilitate maritime commerce, to protect the marine environment, and to comply with National Transportation Safety Board recommendations regarding staffing and fatigue mitigation.

In addition to those comments that precipitated changes from what we proposed in the NPRM, commenters raised a number of questions that required responses, but have not led to the Coast Guard making further changes from the proposed rule.

One commenter, a pilotage district, asked if they can continue to use Canadian Pilots for training and, if so, does the proposed § 401.211(d) apply to them. Our answer is yes, a Canadian Pilot can train the Apprentice Pilot with the Director’s prior approval. Canadian Pilots, like United States Pilots, must be approved by the Director to be eligible to provide training. The use of Canadian Pilots for training is a past and current practice, and the Director will continue to approve these Pilots if necessary. We expect this to be a rare occurrence; especially with the Western Great Lakes Pilots Association, because this association is responsible for all the dispatching in its area of responsibility.

The same commenter asked us to change the reporting deadlines from August and January 15th to the end of each month. We disagree with adjusting the dates. Particularly when it comes to January, we believe that the closer the deadline is to date when the Seaway Locks close, the easier it is for the districts to comply. All United States Registered Pilots are required to be available; the association employees should be available and on site, and the cost to obtain the required information is less than recalling someone after the office has been closed/modified for winter navigation.

This commenter also asked the Coast Guard to further define the term

“weather,” within the context of the proposed § 401.420. We defer to the plain meaning of the word. We trust the Master and the Pilot to use their respective expertise to determine whether it is safe to proceed. We will determine if the costs are allowed on a case-by-case basis.

Another issue the commenter raised was whether, under the new § 401.420, a Pilot must be paid for time spent on an anchored vessel during a delay caused by ice or weather. The answer depends on the time of year when the delay occurs. From May 1 to November 30, vessels are not liable for charges for weather-related interruptions or delays. In the colder months, from December 1 to April 30, Pilots may bill for time lost during delays. This distribution of liability is designed to spread the risk of liability among Great Lakes stakeholders and to encourage decisionmakers to make a determination based on safety prior to the Pilot departing for the vessel. We can add this topic to a future Great Lakes Pilotage Advisory Committee Meeting Agenda to determine the merits of changing the status quo.

None of the public comments prompted changes to the methodology used for the regulatory analysis. Further, there are no more recent wages available at the time of the final analysis. Therefore, the regulatory analysis for this final rule is as published in the NPRM with no changes.

V. Discussion of the Rule

A. Summary of Changes

This rule makes several changes to 46 CFR parts 401 and 402 to clarify nomenclature, and to align these regulations with current practice and with other relevant regulations and plain language guidelines. The changes are summarized here and discussed in detail, section-by-section, below.⁸

The most substantial change is updating the definitions section in part 401, subpart A. This clarifies the phases of transition through the registration process and adds definitions for miscellaneous terms to clarify their application in other subparts.

The Coast Guard also updates each instance of the affected terms, based on the new definitions that appear elsewhere in parts 401 and 402. Additionally, the Coast Guard changes the application and training requirements for the different phases of pilotage registration in part 401, subpart B, that follow this progression: “Applicant,” “Applicant Trainee,”

“Apprentice Pilot,” “Limited Registration,” “Full Registration,” and “Temporary Registered Pilot.”

The Coast Guard aligns these regulations with current Pilot training practices and clarifies the obligations that mariner applicants must fulfill before advancing to the next phase of registration.

The Coast Guard is changing the regulations covering the administration of Registered Pilots located in subparts B, C, D, E, and G and bringing the regulations into conformity with modern Pilot administrative practices. Many of the specific requirements reference outdated locations, contact information, and procedures. Those antiquated references make the regulations difficult to understand, and these changes bring much needed clarity to the regulations imposed on Registered Pilots.

The last category of changes is a series of technical amendments that bring the regulations into conformity with the Federal Plain Language Guidelines (available at <https://www.plainlanguage.gov/guidelines/>).

A section-by-section description of the changes follows. Some sections—§§ 401.100, 401.120, 401.300 through 401.340, 401.400, 401.427, 401.430, 401.451, 401.500, 401.615 through 650, 401.700—are not included in these descriptions. This is because the changes to these sections are technical amendments, like capitalizing “U.S. Registered Pilots”, or changing the word “pool” to “pilotage pool” to be more precise.

B. Definitions

The Coast Guard makes several changes to § 401.110 to update the phases of Pilot registration; to add definitions to terms that are commonly used by industry members, but not reflected in the CFR; to revise definitions for terms whose meaning has changed since the last update to these regulations; and to remove definitions for terms that are no longer used or applicable to these regulations.

Updated Phases of Pilot Registration

In § 401.110, the Coast Guard redefines the different stages of Pilot registration to clarify the transitions through the registration process. At present, there are training phases that are commonly used by Pilots in practice but lack precise legal definitions. This can lead to confusion for Pilot applicants as to what is required of them before advancing to the next phase.

The Coast Guard adds the following terms and their definitions, currently

⁸ As discussed earlier, this rule also makes one change to 46 CFR part 10.

used in practice, to the CFR: “Applicant” and “Temporary Registered Pilot”. The Coast Guard redefines the following terms already existing in the CFR: “Apprentice Pilot,” “Limited Registration”, and “Applicant Trainee”. The general progression is as follows: Applicant, Applicant Trainee, Apprentice Pilot, Limited Registration, Full Registration (which we also refer to as a United States Registered Pilot or U.S. Registered Pilot in the regulations), and Temporary Registered Pilot. This clarifies the differences between the terms and phases. We describe these updates, in turn, below.

Applicant

The Coast Guard adds the term Applicant and its definition to the CFR. Applicant means a person who has submitted an Application for Registration as a United States Registered Pilot (Form CG-4509 or “application”) to the Director for consideration for placement in an approved United States Great Lakes Pilot training and qualification program at an association. The Director reviews the application to see if the Applicant meets the minimum requirements, per § 401.210.

Applicant Trainee

The Coast Guard redefines the term Applicant Trainee that currently appears in the CFR. Redefined, Applicant Trainee means a person who is approved by the Director and is participating in an approved U.S. Great Lakes Pilot training and qualification program, and who meets the minimum requirements of the pilotage regulations in the new § 401.214 for Applicant Trainees. These requirements are spelled out in further detail in part C of this section, *Updates to Training Requirements for Pilots*. The Applicant Trainee does not have the necessary 6 months of service or experience on the Great Lakes or an endorsement on their MMC to qualify as an Apprentice Pilot. The Director issues the Applicant Trainee a U.S. Coast Guard Applicant Trainee ID Card.

In practice, the Applicant Trainee spends at least 6 months at the district by closely observing Registered Pilots while underway on all waters of the district. During this period, the Applicant Trainee will gain experience on the district’s waters and ports, develop a professional rapport with the Association Pilots and see how a Pilot coordinates service with a vessel’s Master and crew, escort tugs and lock operators. These trips, conducted as an Applicant Trainee, do not count toward the minimum number of round trips

required for Full Registration. Once the Applicant Trainee completes the familiarization in the district waters, the association can request the Applicant Trainee become an Apprentice Pilot in the district’s training and qualification program. The Applicant Trainee is not eligible for a Limited or Temporary Registration.

Apprentice Pilot

The Coast Guard redefines the term Apprentice Pilot that currently appears in the CFR. Redefined, Apprentice Pilot means a person who has been approved by the Director and is participating in an approved U.S. Great Lakes Pilot training and qualification program. The mariner meets the minimum requirements in revised § 401.211. The Director issues the Apprentice Pilot a U.S. Coast Guard Apprentice Pilot ID Card. The requirements for an Apprentice Pilot are discussed further in the preamble with the changes to § 401.211.

Apprentice Pilots possess a minimum of 6 months of pilotage experience on the Great Lakes and typically have a First-Class Pilot endorsement on their MMC for the waters in which Full Registration is sought. The Apprentice Pilot is required to complete round trips until the Apprentice Pilot demonstrates proficiency, accompanying a U.S. Registered Pilot or Temporary Registered Pilot, upbound and downbound in the district’s waters, and inbound to and outbound from ports, in accordance with their individual training plan.

Limited Registration

The Coast Guard redefines the term Limited Registration that currently appears in the CFR. Limited Registration means an authorization issued by the Director via letter to an Apprentice Pilot, upon the request of the pilot association, that allows the Apprentice Pilot to provide pilotage service without direct supervision from a U.S. Registered Pilot or Temporary Registered Pilot in a specific area or waterway to facilitate the Apprentice Pilot’s training. The requirements for a Limited Registration are discussed with the changes to § 401.211 in new paragraph (k).

Full Registration

The Coast Guard adds the term Full Registration and its definition to the CFR. Full Registration means the issuance of a Certificate of Registration ID card, by the Director, to an Apprentice Pilot, who meets and completes the Coast Guard’s registration requirements in the new §§ 401.210, 401.211, 402.210, and 402.220. These

requirements are discussed further in part C of this section, *Updates to Training Requirements for Pilots*.

Generally, if the Apprentice Pilot satisfies all the Coast Guard’s registration requirements and the pilot association’s requirements and has maintained favorable performance evaluations during the training program, the Apprentice Pilot advances to Full Registration. The pilot association can request that the Director consider an Apprentice Pilot for Full Registration as a United States Registered Pilot. The Director can approve or deny the request. If approved, the Director issues the Apprentice Pilot a Certificate of Registration, making them a fully Registered Pilot. Full Registration makes the Apprentice Pilot a United States Registered Pilot, who may provide pilotage services for the relevant pilot association, in accordance with the pilotage regulations.

Temporary Registered Pilot

The Coast Guard adds the term Temporary Registered Pilot and its definition to the CFR. A Temporary Registered Pilot means a person who is issued a Temporary Registration by the Director, in accordance with the new § 401.222. A Temporary Registration applies to Pilots who desire to provide pilotage services, but who have either reached the age of 70 or have previously retired from pilotage service. The Coast Guard requires that a Temporary Registered Pilot holds a valid MMC, has previously held a Full Registration, meets the requirements of § 401.222, and has received approval by the Director to provide pilotage services. The new requirements in § 401.222 are discussed further below in part C. of this section, *Updates to Training Requirements for Pilots*. The Director may make the Temporary Registration valid for a certain period of time, not to exceed 1 year from the date of issuance.

New Definitions

In addition to the updated phases of Pilot registration, the Coast Guard also adds definitions to part 401 for the following terms that appear elsewhere in 46 CFR chapter III to better clarify their meanings as they relate to Great Lakes Pilots: “chemical test”, “gross tonnage”, “individual training plan”, “marine accident”, “minimum number of round trips”, “officer endorsement”, “round trip”, and “semi-annual performance evaluation report”. These terms are explained in the following paragraphs.

Chemical Test

The Coast Guard adds the definition of “chemical test” to the definitions in § 401.110 to clarify the kind of test that will comply with the new reporting requirements. Chemical test means a scientifically recognized test that analyzes an individual’s breath, blood, urine, saliva, bodily fluids, or tissues for evidence of dangerous drug, alcohol use, or any illegal substance, in alignment with the existing definition in 46 CFR 4.03–7. The definition of chemical test applies to the new requirements in parts 401 and 402 for mariners to submit chemical tests to the Coast Guard, either at the Applicant phase of their application to be a Pilot, or for marine accident reporting.

Gross Tonnage or GT

This rule adds a definition for “gross tonnage or GT” to align with the gross tonnage measurement of the vessel under 46 U.S.C. chapter 143, Convention Measurement. Parts 401 and 402 use gross tonnage in the context of determining whether Applicants or Apprentice Pilots (referred to as “applicant pilots” in the current CFR) have had comparable experience on other vessels or integrated tugs and tows on the Great Lakes or oceans to that of Registered Pilots on the Great Lakes. Though compliance with 46 U.S.C. chapter 143 is not mandatory for United States or Canadian vessels operating only in the Great Lakes, the Coast Guard adopts the Convention Measurement’s definition of gross tonnage to clarify which tonnage scheme the Great Lakes Pilotage regulations use. This is the same definition used in 46 CFR 10.107 for MMCs.

Individual Training Plan

The Coast Guard adds the term “individual training plan” and its definition to the CFR. This term and its definition are consistent with its use in current pilot association training programs. The individual training plan outlines the specific requirements of the association for an Apprentice Pilot, including the length of time to complete the training, and the minimum number of round trips required to demonstrate proficiency. The individual training plan communicates the qualifications and demonstrated skills that the Apprentice Pilot are required to complete to meet the proficiency requirements for the training. The association submits the individual training plan to the Director for review and approval, and the Director tracks the Apprentice Pilot’s development through the training period. This is

consistent with current practice. The association establishes an individual training plan’s training requirements based on the association’s determination of proficiency, the officer endorsement on the MMC, and the Apprentice Pilot’s pilotage experience on the Great Lakes.

Marine Accident

The Coast Guard adds a definition for the term “marine accident” that currently appears elsewhere in the CFR. A marine accident includes any of the following incidents that occur while a United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot is providing pilotage services in United States or Canadian waters:

- (i) Any allision or collision;
- (ii) Any grounding;
- (iii) A loss of main propulsion, primary steering, or any associated component or control system that, due to its duration or other circumstance, significantly impacts the maneuverability of the vessel;
- (iv) An occurrence, directly related to the provision of pilotage services, involving significant harm to the environment, as currently defined in 46 CFR 4.03–65; or
- (v) Any other incident, directly related to the provision of pilotage services, causing property damage more than \$75,000 U.S. dollars (including the cost of labor and material to restore the property to its condition before the incident, but excluding the cost of such things as salvage, cleaning, gas-freeing, drydocking, or demurrage).

The outlined instances in this definition are based on the notice of marine casualty reporting requirements in 46 CFR 4.05–1, and tailored for reporting marine accidents related to the Great Lakes pilotage program.

The definition of “marine accident” is used to identify events or occurrences where Pilots must submit a marine accident report to the Director under the revised § 401.260. Clearly defining a marine accident ensures that certain marine accidents are reported to the Director in support of the Director’s oversight. The reporting requirement clarifies that this obligation to report marine accidents to the Director does not alleviate any other marine casualty reporting requirements elsewhere in Coast Guard or other agency regulations. We add the marine accident definition and reporting requirement to alleviate concerns about accidents related to Great Lakes pilotage not being reported to the Director.

Minimum Number of Round Trips

The Coast Guard adds a definition for “minimum number of round trips” to have one term to define the least number of successful round trips an Apprentice Pilot must complete to become eligible for Full Registration. Mere completion of this number of trips does not qualify an Apprentice Pilot for Full Registration. Instead, the phrase, minimum number of round trips, means the fewest successful round trips that the Apprentice Pilot is required to perform under the direct supervision of a U.S. Registered Pilot or Temporary Registered Pilot to demonstrate proficiency prior to advancing and completing training. The minimum number of round trips required is prescribed in the Apprentice Pilot’s approved individual training plan, discussed in the revised § 401.211. Section 402.220 contains the minimum number of round trips for certain officer endorsements.

Each round trip is evaluated, and the evaluation form retained in the mariner’s training record. If, after evaluation, the Apprentice Pilot does not satisfy the Director’s or association’s proficiency requirements, additional trips in that area or port will be required.

Officer Endorsement

The term “officer endorsement” is defined in the regulations governing MMCs in 46 CFR part 10 to mean an annotation on an MMC that allows a mariner to serve in the capacities listed in 46 CFR 10.109. We are adding a definition for officer endorsement that matches the definition in 46 CFR part 10 to help ensure that the term is interpreted consistently.

Round Trip

The Coast Guard adds a definition for “round trip” to clarify what is expected of the Apprentice Pilot, as outlined in their individual training plan. We define round trip as providing pilotage service, in both directions, from one change point to another change point, or inbound and outbound in a port designated by an authorized pilotage pool. This definition also applies to the round trip in the context of “minimum number of round trips”. Defining round trip clarifies the minimum requirements for Apprentice Pilots in their training.

Semi-Annual Performance Evaluation Report

The Coast Guard adds a definition for “Semi-annual Performance Evaluation Report.” Twice per year, the association is required to submit to the Director a progress report of how the Apprentice

Pilot is progressing through their training. The report assesses an Apprentice Pilot's progress in the pilot association's training and qualification program, and the Apprentice Pilot's performance in completing their individual training plan.

Revised Definitions

We are revising the definitions of "association", "Commandant", "comparable experience", "Director", "person", "pilotage pool", "Rate computation definitions to determine Weighting Factors", "Secretary", and "United States Registered Pilot or U.S. Registered Pilot" to align the regulatory definitions with industry usage and understanding. These revisions are detailed below.

Association

The Coast Guard removes the words "or held" from the definition of association. This clarifies that if the Coast Guard revokes an association's Certificate of Authorization, they are no longer an association under the Act or under Coast Guard regulations. In addition, the Coast Guard specifies in the definition of association that the Director, instead of the Great Lakes Pilotage Branch, issues the Certificate of Authorization to the association.

Commandant

In the definition of "Commandant," our only change is to replace the outdated office symbol, CG-00, with the current office designation, CCG.

Comparable Experience

The Coast Guard is changing the first sentence in the definition of "comparable experience" to better define the requirements. Currently, the definition is that comparable experience is similar experience obtained by serving as an officer of a vessel. The changes state that comparable experience means knowledge and previous performance that is equivalent to the knowledge and technical skills obtained by serving as an officer on vessels of at least 4,000 GT. We add that comparable experience must be obtained on vessels of at least 4,000 GT, throughout the regulations, to be consistent regarding comparable experience and the requirements to be a Registered Pilot in 46 U.S.C. 9303(a)(2). The existing regulations for qualifying for registration in 46 CFR 401.210(a)(1) require service to be accrued on vessels of 4,000 GT or over on the Great Lakes or oceans. This experience, on vessels of 4,000 GT or over, also applies to Apprentice Pilots (currently referred to

as "applicant pilots" in the CFR) in existing § 401.211(a)(1).

Director

In the definition, this rule removes an outdated reference to "Commandant (CG-WWW-2)" and replaces it with "Director, Great Lakes Pilotage". We also update the mailing address for the Director within the definition.

Person

In this definition, we change the term "pool" to "pilotage pool," to align with the new definition of "pilotage pool" discussed below.

Pilotage Pool

The Coast Guard revises the current term and definition of "pool" by revising the term and amending the definition. First, we revise the term pool by adding "pilotage" to identify it more clearly. Throughout parts 401 and 402, this rule updates all references to "pool" to "pilotage pool." In current practice, the Director provides the pilotage pool a Certificate of Authorization to operate as an association.

Second, the definition of pool in the current CFR text is an organization authorized to provide pilotage services. We revise the definition to account for the requirement that an organization must hold a Certificate of Authorization issued by the Director to provide pilotage services. The new definition clearly indicates what is required for a pilotage pool authorization.

Rate Computation Definitions To Determine Weighting Factors

The Coast Guard adds the words, "to determine Weighting Factors" to the existing phrase, "Rate computation definitions," at § 401.110(a)(10) to indicate the purpose for these rate computation definitions to the public. The definitions of "length", "breadth", and "depth" at § 401.110(a)(10)(i)–(iii) remain unchanged. Weighting factors are used in the calculation of a vessel's pilotage rate to determine the appropriate fee for a vessel's pilotage services and are based on the size of the vessel.

Secretary

This rule revises the definition of "Secretary" to align with the definition used in 46 U.S.C. 2101. The revised definition points to the Secretary of the department in which the Coast Guard is operating, instead of the Secretary of Homeland Security. This change promotes consistency between definitions used throughout statutes and Coast Guard implementing regulations.

United States Registered Pilot or U.S. Registered Pilot

This rule makes non-substantive changes to the definition of "United States Registered Pilot or U.S. Registered Pilot." First, we remove an outdated reference to "license" and revise the discussion of the authorization document to read "an MMC with an officer endorsement." We add the word "areas" to capture that the endorsements for pilotage on the Great Lakes can be for routes or areas. We also make an edit that, under the new training stage nomenclature, a United States Registered Pilot currently holds a Certificate of Registration.

We also update the outdated references to Title 52 of the Revised Statutes of the United States with references to Title 46 of the United States Code, which is where the Coast Guard's statutory authority exists for Great Lakes pilotage regulations.

Removed Definitions

The Coast Guard removes the definition of "movage", because the ratemaking methodology no longer supports this action. Under the ratemaking methodology before 2016, pilot districts charged the vessel owners a defined movage fee to move a vessel from one place to another: for example, from an anchorage to inside the harbor, or dock to dock. Since the ratemaking methodology was updated in 2016, vessel owners are charged an hourly rate for any vessel movement by a United States Registered Pilot, rounded up or down to the nearest 15 minutes.

The Coast Guard also deletes the definition of "other officer" from the definition section, because we are deleting the only reference to the term in § 401.510(b)(3). The definition is no longer necessary, because the term is no longer used in parts 401 through 404.

Organizational Changes

The Coast Guard revises § 401.110 to list the existing and new definitions in alphabetical order to make it easier for the reader to find definitions.

The Coast Guard is also updating each instance of affected terms in parts 401 and 402 to align with the new definitions.

C. Updates to Training Requirements for Pilots

The Coast Guard is updating the regulations that govern the application and training requirements to bring the CFR into conformity with industry practice. These regulations, located in part 401, instruct a candidate as to what specifically they must do to apply and progress through the newly clarified

phases of Pilot registration. Following is a section-by-section description of the updates to the Great Lakes Pilotage application and training requirements. These changes include formatting changes that will improve the usability and readability of the CFR.

§ 401.200 Application for Registration

In § 401.200, the Coast Guard adds the email address, *GreatLakesPilotage@uscg.mil*, and the physical mailing address, Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509, to which Applicants for pilotage on the Great Lakes must submit their Application for Registration as a United States Registered Pilot (Form CG–4509). We allow either physical mail or electronic submission of Form CG–4509 to the Director to provide flexibility to the mariners. This change also provides clear guidance for where to submit the form.

In this section, the Coast Guard removes the requirement to submit two full-face photographs when submitting Form CG–4509. The passport photos are not needed at this stage of the process. Following the submission of an application and an interview process, passport-style photos will be requested from the Applicant if they are approved for a U.S. Great Lakes pilot training and qualification program. The requirement to submit the photos upon the request of the Director are in § 401.211(e) for Apprentice Pilots, and in the new § 401.214(e) for Applicant Trainees.

In practice, if the Applicant does not submit the required application materials, the Coast Guard Great Lakes Pilotage Office works with the Applicant to obtain the required documentation to meet the minimum requirements. Once the Applicant provides additional information and meets the minimum requirements, the approved application is forwarded to the pilot district(s) requested by the applicant for consideration. The pilot associations maintain a list of Applicants who meet the minimum requirements, and they conduct interviews based on the need for more Pilots and on the applications provided by the Great Lakes Pilotage Office. If the Applicant is selected by the association, the association submits a letter to the Director requesting that the Applicant be placed in that district's approved training and qualification program.

We are also making a formatting change to this section to remove paragraph (a)'s designation. All the text within this section is undesignated. Removing the paragraph (a) designation removes the need for the unused

reserved paragraph (b) within this section. There is no need for multiple paragraph designations within § 401.200.

§ 401.210 Requirements and Qualifications for Full Registration

In paragraph (a)(1), the Coast Guard clarifies that the mariner must have an MMC with an officer endorsement issued in accordance with 46 CFR subchapter B, part 11. We delete the outdated references to Title 52 of the Revised Statutes of the United States. We also change applicants qualifying with “ocean service” to applicants qualifying with “other than Great Lakes service,” because mariners may have different endorsements on their MMC, such as Master-Ocean or Master-Inland Waters. This change clarifies that applicants qualifying with an endorsement on their MMC other than Great Lakes service must obtain at least 6 months of service as a deck officer, or comparable experience, on the Great Lakes.⁹ We also clarify that the officer experience must be “deck” officer experience. Deck officer experience means that the mariner is working under the authority of a deck officer endorsement, in accordance with 46 CFR part 11, subpart D.

Paragraph (a) of this section contains several requirements that a Pilot must meet to be eligible for Full Registration. We make the following changes to the paragraphs and redesignate the requirements in paragraphs (a)(1)–(8).

In paragraph (a)(4), the Coast Guard adds a reference to 46 CFR part 10, subpart C, for the mariners to find the applicable medical requirements and standards prescribed by the Commandant.

In paragraph (a)(6), the Coast Guard removes the requirement for a U.S. Registered Pilot to have a valid TWIC, because this requirement is duplicative of the TWIC requirement prescribed in 46 CFR 10.203 for obtaining an MMC. A mariner cannot be a U.S. Registered Pilot without holding an MMC. This non-substantive change is in accordance with GLPAC recommendation 1 from the “GLPAC Subcommittee Teleconference Meeting Minutes” from March 5, 2018. Because we remove the text from paragraph (a)(6), we redesignate the subsequent lower-level paragraphs in paragraph (a). We move the existing requirement, that the mariner agrees to be available for service, from paragraph (a)(7) into paragraph (a)(6), without change.

In redesignated paragraph (a)(7), the Coast Guard changes “Applicant Pilot”

to “Apprentice Pilot” to conform to the new definitions. Revised paragraph (a)(7) requires mariners seeking Full Registration to complete the requirements for an Apprentice Pilot in § 401.220(b). We are also deleting the text “if applying for registration for waters in which a pilotage pool is authorized”, because the requirements in § 401.220(b) apply to all Apprentice Pilots.

In 401.210(a)(8), the Coast Guard also adds that Apprentice Pilots requesting Full Registration must meet chemical testing requirements, as defined in 46 CFR part 16. Currently, all U.S. Pilots on the Great Lakes are required to meet the chemical testing requirements in part 16. The purpose of this addition is to clarify that this will also be part of the Apprentice Pilot qualifications.

§ 401.211 Training Requirements for Apprentice Pilots and Limited Registration Authorization

The Coast Guard changes the term “Applicant Pilot” to “Apprentice Pilot” throughout this section to align with the new definition of Apprentice Pilot. Use of the term Apprentice Pilot falls more in line with industry vernacular. We also add “Limited Registration Authorization” to the section name because we include the requirements for Apprentice Pilots to obtain this authorization as part of their training program.

This rule separates the requirements to select Apprentice Pilots for training from existing paragraph (a) and puts the list into new paragraph (b). In the requirements for Apprentice Pilots in redesignated paragraph (b)(1), this rule updates the cross-reference from § 401.210(a)(7) to paragraph (a)(8) to conform with redesignations in that section.

In paragraph (b)(3), the Coast Guard revises the Radar Observer requirement to state that the Apprentice Pilot must have a Radar Observer-Unlimited endorsement on their MMC. We also include a cross-reference to the Radar Observer requirements in § 11.480 for the public's reference. By removing the obsolete radar competency certificate option, we bring the regulations up to date with the current Radar Observer endorsement requirements in 46 CFR subchapter B, part 11. This conforming change is not a new requirement for mariners, because they are already required to hold a radar endorsement issued by the Coast Guard.

In new paragraph (d), the Coast Guard adds “Temporary Registered Pilots” who authorized pilot organizations may designate for approval by the Director to provide training.

⁹ March 2018 Meeting Minutes, *supra* note 6.

We also allow submission of Form CG-4509 to the email address GreatLakesPilotage@uscg.mil or to the physical mailing address Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593-7509. Emailing the form could reduce the administrative burden associated with submitting the form. We also clarify that the Director will request signed passport-style photographs from those applying to be an Apprentice Pilot, when needed. The photographs are not required when submitting Form CG-4509 because the photos are not needed until the Coast Guard is ready to issue an ID card.

The Coast Guard also clarifies the issuance of the U.S. Coast Guard Apprentice Pilot ID Card in paragraph (f). If the applicant meets the requirements in this section and is selected to be placed in an association's training program, the association submits a letter to the Director for approval. If the Director approves placing the applicant in the training program, the Coast Guard issues the applicant an Apprentice Pilot ID Card.

The Coast Guard expands the list of circumstances when an Apprentice Pilot ID Card becomes invalid, adding paragraph (f)(1) to account for the Director's statutory authority to set validity periods in 46 U.S.C. 9303(c). At the time of issuance, the Director indicates a validity period for the card. For example, the Director could coincide the expiration dates of the ID Card with the dates of the Semi-annual Performance Evaluation Reports, August 15, and January 15. The other three existing grounds for expiration for the Apprentice Pilot ID Card remain substantively the same, including when the Apprentice Pilot is registered as a Pilot under § 401.210, when the Apprentice Pilot withdraws from the training program, or when the card is ordered withdrawn by the Director.

In new paragraph (g), we add a requirement that all Apprentice Pilots must have a Director-approved individual training plan. The associations currently provide Director-approved individual training plans to the Apprentice Pilots as guidance during the approved U.S. Great Lakes pilot training and qualification program. Our intent is to codify this current practice in the regulations. As stated in the definition, an individual training plan outlines the specific requirements and expectations for each Apprentice Pilot. The individual training plan provides clear direction for the Apprentice Pilot, association, and Director regarding the Apprentice Pilot's goals and progression through the

training program. The Apprentice Pilot and the pilot association record the round trips outlined in the individual training plan and provide this information to the Director for review.

In paragraph (g), we also clarify that round trips completed as an Apprentice Pilot count toward the minimum number of round trips required for Full Registration. Because we did not define round trips previously, there was confusion for Applicant Trainees and Apprentice Pilots regarding when their trips did or did not count toward the Full Registration certification. The trips outlined in the Apprentice Pilot's individual training plan and conducted with a U.S. Registered Pilot or Temporary Registered Pilot must be recorded by the Apprentice Pilot to count toward Full Registration. If the association feels that the Apprentice Pilot is not ready to provide pilotage services after completing the required minimum number of round trips outlined in their individual training plan, the association can require the Apprentice Pilot to continue conducting round trips until they meet the association's requirements. Trips completed while an Applicant Trainee do not count toward the minimum number of round trips.

In addition, the Coast Guard adds new paragraph (h), which requires associations to conduct Semi-annual Performance Evaluation Reports for their Apprentice Pilots to assess the Apprentice Pilots' progress in their training program. The associations currently provide evaluation reports to the Director that share the Apprentice Pilot's progress in the approved U.S. Great Lakes pilot training and qualification program at the district. We codify this current practice in the regulations. The associations submit these reports to the Director by August 15 and January 15 of each season.

The report includes recommendations to the Director on whether or not to keep the Apprentice Pilot in the training program. This report is intended to evaluate the Apprentice Pilot's progression through their training and to help keep the Director informed of that progress. The report provides the Apprentice Pilot necessary feedback to stay on track with their individual training plan and association expectations. By requiring a semi-annual report submission to the Coast Guard, all parties remain informed of the progression of the Apprentice Pilot's training throughout the Great Lakes. All requests for Apprentice Pilots and Limited Registrations must contain an endorsement from the pilot association's training committee or president for the

Director's consideration. A positive endorsement does not guarantee issuance or renewal by the Director. The Director considers the Apprentice Pilot's training progress, traffic projections, and other relevant information when making the decision to issue a certification.

Another requirement at new paragraph (i) is that the Apprentice Pilot must be enrolled in the association's chemical testing program, commonly known as drug testing, which meets the requirements of 46 CFR part 16. We add chemical testing requirements and compliance into these regulations to ensure that Apprentice Pilots are monitored by the associations in the interest of maritime safety on the Great Lakes.

In new paragraph (j), the Coast Guard adds procedures for how an Apprentice Pilot may obtain a Limited Registration. When the Director determines a need for the Pilot to meet the needs of increased vessel traffic, a Limited Registration is issued to an Apprentice Pilot who has completed the requirements in § 401.220(b)(1) and maintained a favorable performance evaluation in their Semi-annual Performance Evaluation Reports. The Apprentice Pilot must satisfy the association's requirements in a specific area or port of the district waters to be eligible for a Limited Registration, as set out in the Apprentice Pilot's training plan approved by the Director.

Thereafter, the association requests approval for the Apprentice Pilot to provide pilotage services in these specific areas without supervision by a United States Registered Pilot or Temporary Registered Pilot. If approved, the Director issues the Apprentice Pilot a letter authorizing Limited Registration for the area requested by the association. The Apprentice Pilot can provide pilotage services without supervision in the authorized area and can continue to complete round trips in other areas and ports as opportunities are provided by the association. Once all required round trips are completed, per their individual training plan, a request to the Director may be made to administer the pilot's written exam to the Apprentice Pilot.

The Director can revoke the Limited Registration if the Director feels that the association is not providing the Apprentice Pilot appropriate training time to complete the remaining trips left in the district waters. Limited Registrations are valid for as long as the Director determines is necessary.

Last, we add new paragraph (k), which states requirements for when an Apprentice Pilot may be eligible for a Certificate of Registration. These

requirements are distinct from the requirements for Applicant Trainees contained in § 401.214, and they reflect the value of an Apprentice Pilot's experience. The four requirements are: completion of a Director-approved Great Lakes pilot association's individual training program; an endorsement from the association; receipt of a passing grade on the Director's exam; and a determination by the Director that there is a need for an additional Pilot in that association. These requirements exist in practice and are referenced throughout parts 401 and 402. We codify them here to clarify to the Apprentice Pilot and to the associations what conditions are necessary to reach Full Registration.

§ 401.214 Training Requirements for Applicant Trainees

In this new section, we outline the requirements for Applicant Trainees. This section codifies the Director's authority to determine the number of Applicant Trainees needed in training at a time for each association to ensure enough U.S. Registered Pilots in that district. This authority is exercised in the ratemaking update every year, but this rule codifies it.

The requirements for Applicant Trainees are similar to those for Apprentice Pilots, but Applicant Trainees do not require any prior Great Lakes service experience. The Applicant Trainee must be a U.S. citizen, of good moral character and temperate habits, physically competent, available for service, under the age of 60, in compliance with the chemical testing requirements, and have a Radar Observer-Unlimited endorsement on their MMC.

The Applicant Trainee is required to obtain at least 6 months of service as a credentialed officer on the Great Lakes, or comparable experience, before being considered for Apprentice Pilot. An Applicant Trainee trains under the supervision of a U.S. Registered Pilot or Temporary Registered Pilot. This section in paragraph (d) states that the Director must approve the Pilots designated to provide training to Applicant Trainees, as an oversight measure. When an Applicant Trainee conducts trips with a U.S. Registered Pilot or Temporary Registered Pilot to complete the 6-month familiarization requirement, or comparable experience on the Great Lakes, the round trips do not count toward Full Registration certification.

Applicant Trainees who meet the minimum requirements set forth in this section are required to receive an endorsement from the pilot association's training committee or the president for

the Director's consideration. A positive endorsement does not guarantee issuance or renewal by the Director. The Director considers the Applicant Trainee's progress, traffic projections, and other relevant information when making the decision to issue a certification.

We clarify that the Applicant Trainee must submit Form CG-4509 to the email address, *GreatLakesPilotage@uscg.mil*, or to the physical mailing address, Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593-7509. The Director requests the signed passport-style photographs when they are needed, but they do not need to be submitted with the application. The Coast Guard does not need the photos until issuing the ID card.

Applicant Trainees selected by the association and approved by the Director are issued a U.S. Coast Guard Applicant Trainee ID Card. The card remains valid until the earliest expiration date set by the Director, the date the Applicant Trainee is registered as an Apprentice Pilot, the date the Applicant Trainee withdraws from the training program, or the date the Director orders the card returned.

§ 401.220 Registration of Pilots

The Coast Guard removes the 1-year time limit in §§ 401.220(b)(1) and 402.220(a) for Apprentice Pilots to complete their round trips, and instead allows the applicable time limit to be specified in an Apprentice Pilot's individual training plan. Due to limited vessel traffic in some districts and ports, some Apprentice Pilots are not able to complete the required number of training trips in 1 year. This change allows Apprentice Pilots more time to complete these trips, in accordance with their individual training plan.

Currently, training takes 2 to 3 years, on average, depending on which MMC endorsements the Apprentice Pilot holds and how quickly they satisfy the requirements set forth by the association and approved by the Director. This change is in accordance with GLPAC subcommittee recommendations 4 and 5, described in the "GLPAC Subcommittee Teleconference Meeting Minutes" from March 5, 2018, and adopted at the GLPAC Teleconference meeting on April 11, 2018.¹⁰

The revisions to § 401.220(b) align the requirements in (b)(1) through (3) with the new definition for Apprentice Pilots. In paragraph (b)(3), the Coast Guard clarifies when the written examination is taken by the Apprentice Pilot. The

written examination is the final step to be considered for Full Registration. After the requirements of the regulations and the individual training plan have been met, and the association is comfortable with the Apprentice Pilot's progress, the association sends a request to the Director for the administration of the written exam. The Director arranges for the Apprentice Pilot to take the written exam at the nearest Regional Exam Center or respective pilot association office. The changes to paragraph (b)(3) indicate that the Apprentice Pilot is eligible to take the exam after they complete their minimum number of round trips and their approved training plan prescribed by the association.

In paragraph (c), this rule explains that the pilot association's recommendation for registering the Apprentice Pilot can include reasons for or against their registration. Currently, the text only requires the association to include reasons for the registration. We wish to clarify that the association should include any reasons, for or against registration, that are relevant to the Director's decision.

The Coast Guard clarifies in paragraph (d) that a Certificate of Registration can be issued to an Apprentice Pilot who has completed all the requirements and has been found qualified and removed an outdated reference to Title 52 of the Revised Statutes.

In § 401.220, this rule deletes paragraph (e). This paragraph authorizes the Director to issue a temporary Certificate of Registration of less than 1 year to qualified persons, regardless of age. We delete this because Temporary Registration is redefined and prescribed in the new § 401.222, discussed next.

D. Administration of Great Lakes Pilots

The Coast Guard updates various sections in parts 401 and 402 that govern the administration of Great Lakes Pilots. These changes modernize the mechanisms and practices used by the Coast Guard to register, monitor, and ensure the compliance of Great Lakes Pilots. A section-by-section description of the changes to each section follows.

§ 401.222 Temporary Registered Pilots on the Great Lakes

In conjunction with the new definition for "Temporary Registered Pilot," the Coast Guard adds a new § 401.222 regarding the requirements and issuance of a Temporary Registration. The mandatory retirement age for United States Registered Pilots is 70 years old. However, if a Pilot maintains their MMC and meets the

¹⁰ March 2018 Meeting Minutes, *supra* note 6.

medical requirements, they can, with the Director's approval, receive a Temporary Pilot ID Card. Possession of this card makes the Pilot eligible for an association to request their pilotage services. Alternatively, if a United States Registered Pilot has previously retired and is requested by the association to provide pilotage services, the Director can issue a Temporary Registration for them. We removed the old 401.222(a)(5) from the proposed rule in order to allow a retired pilot to seek Temporary Registration of their own volition, making their ready and available when the need arises.

A mariner seeking Temporary Registration under this section must meet the requirements of a United States Registered Pilot in § 401.210, except the age requirement. Temporary Registration is for Pilots who desire to provide pilotage services, but either have reached the age of 70 or have retired. The Temporary Registration is valid for a period defined by the Director, but it does not exceed 1 year from the date of issuance. Current regulations in § 401.220(e) for Temporary Registration have the same 1-year validity period. Given the risks associated with piloting large vessels through the Great Lakes and rivers, an annual renewal requirement continues to promote the safety goals on the Great Lakes, while allowing flexibility to mariners who wish to continue providing pilotage services after retirement or age 70.

§ 401.230 Certificates of Registration

In § 401.230(a), when describing the waters where the Certificate of Registration authorizes the Pilot to perform pilotage services, the Coast Guard uses "areas and routes" in place of "part or parts" as used in the current § 401.230(a). Using "areas and routes" better aligns with language used throughout the pilotage regulations.

In paragraph (c), the Coast Guard clarifies that a Certificate of Registration may not be digitally reproduced or be used to make a facsimile, in addition to the current prohibitions against copying or Photostat. The original Certificate of Registration, issued by the Director, is the only document allowed to be carried by a U.S. Registered Pilot. These changes further clarify that no copies, printed or electronic, are allowed.

In paragraph (d), the Coast Guard requires that replacement requests for Certificates of Registration must be made on Form CG-4509 instead of writing a letter, as the Coast Guard requires the information on the form to be updated to issue a new Certificate of Registration. The Coast Guard also

clarifies the style of signed photographs needed to generate a replacement for a Certificate of Registration that has been lost, damaged, or defaced. Because the signature on the photograph is needed to authenticate the certificate, the signature must be as close to the head as possible, so that the signature remains visible when the photograph is trimmed to fit the certificate during creation.

§ 401.240 Renewal of Certificates of Registration

The Coast Guard clarifies in § 401.240(a) that an applicant for a renewal of Certificate of Registration must submit Form CG-4509.

The Coast Guard clarifies the style of photographs needed to generate a Certificate of Registration for renewal. Specifically, we state that the signature on the photograph needs to be as close to the head as possible, so that the signature remains visible when the photograph is trimmed to fit the certificate during creation.

§ 401.260 Reports

In paragraph (a), the Coast Guard clarifies that, when a marine accident occurs while a United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot is providing pilotage services, they must report the accident, in writing, to the Director. We add the results of the Pilot's post-casualty drug and alcohol test, if required, to the report's mandatory contents. The existing requirements are put into a list format to clarify what the Pilot must include in the report.

We redesignate new paragraph (b) from the existing requirement in paragraph (a) that the report to the Director does not relieve the Pilot or others of responsibility for submitting any report required by other government agencies of the United States or Canada. We also clarify in new paragraph (b) that this reporting requirement does not affect any other reporting requirements in Coast Guard regulations.

We remove the requirement in 46 CFR 401.260(c) for the pilotage pool to submit a monthly availability report to the Director. As per 46 U.S.C. 9303(a)(3), "the applicant will be available for service when required." In the new 46 CFR 401.210(a)(6), Pilots must agree to be available for service. The Coast Guard sees no use for this monthly availability report requirement, because the associations notify the Director when a Pilot is not available to provide pilotage services. In practice, the Director has not been requiring this monthly report. Accordingly, we

remove the requirement from the regulations.

§ 401.420 Cancellation, Delay, or Interruption in Rendition of Services

In paragraph (a)(3) of this section, the Coast Guard removes the words "or movage" and replaces them with "or transit," because the ratemaking methodology does not account for this movage action. "Transit" aligns better with the terminology used in part 401.

In paragraph (c), the Coast Guard revises the existing provisions specifying that, when pilotage delay is due to ice or weather, the vessel is not responsible for the additional charges invoiced by the association. The regulations currently state that the vessel is not liable for charges under this part. We add the words "or vessel owners" to explicitly extend this exemption to vessel owners to clearly establish the lack of liability for charges under this section.

We also have deleted the joint-agreement provision initially proposed in the NPRM to clarify that the decision to interrupt the voyage, or to detain the Pilot because of ice or weather, must be determined by the vessel Master. This interruption of the voyage, or the detention of the Pilot, is in consideration of marine safety. When possible, the determination to interrupt, detain, or delay the vessel due to ice or weather should be made prior to the Pilot departing for the vessel. This additional guidance on when the determination must be communicated to the Pilot promotes efficiency in the process of calling a Pilot to a vessel and clarifies liability.

We also remove interruption or detention due to traffic as a justification for this exemption for delayed pilotage charges. Vessel traffic is a normal occurrence on the waterways that is expected during the normal course of business. Weather and ice delays are made in response to maritime safety, and vessels should not be penalized for delays made in the interest of safety. These exemptions are intended to relieve vessels for charges brought on by forces outside of their control. While vessel traffic used to be difficult to predict, the availability of the Vessel Traffic System and Automated Information System data means that vessels have access to data that can assist in predicting traffic. Therefore, the Coast Guard is removing this exemption and making vessels responsible for accurately predicting vessel traffic.

§ 401.425 Provision for Additional Pilot

The Coast Guard removes the text, “Great Lakes Pilotage Staff, U.S. Coast Guard, or the General Manager, Great Lakes Pilotage Authority, Ltd., Canada” and all references to Canada and other United States Coast Guard staff, to clarify who decides when an additional United States Registered Pilot is required. We clarify that the Director makes this double pilotage determination, when necessary, for the safe navigation of the vessel.

We also remove the statement that the provisions for an additional Pilot do not apply to a ship that is not required to have a Pilot on board in undesignated waters of Lake Erie between Southeast Shoal and Port Colborne, because a Pilot is always required in these waters. This exemption is obsolete and no longer applies.

Additional Pilot determinations are currently made on a case-by-case evaluation and are usually authorized between when the locks are opened and when the locks are closed. We note in the regulations that this is a case-by-case evaluation, and we include the potential reasons for additional Pilots. The association or vessel representative can request an additional Pilot on the vessel for a specific time, particular port or area, or situation. For example, if an association or vessel needs an additional Pilot due to seasonal removal of aids to navigation, ice conditions, weather forecasts, or other relevant situations, a request for an additional Pilot may be appropriate.

In § 401.425 Provision for additional Pilot, we clarified what we meant in the NPRM by “the opening and closing of the shipping season.” We modified the language to give more clear instructions as to what the opening and closing means. In this section, the authorization may occur at the opening and closing of the year, after the locks have opened or closed.

§ 401.431 Disputed Charges

The Coast Guard updates this section to simplify and streamline the billing dispute process. This makes it easier to understand Coast Guard requirements and how the vessel owner or Master should provide the required data, such as via a written letter from an authorized officer of a company. The letter can be sent via traditional mail or by email, but it must be a formal letter. We also define the response time periods for the Coast Guard, the vessel owner or agent, and the pilot association, to both shorten the process and to hold all involved stakeholders to

regulatory timelines, per GLPAC recommendation 2 from the GLPAC 2018 Annual Meeting on September 10, 2018.¹¹

Under revised paragraph (a), a vessel Master, owner, or agent who disputes the rate or charge for a Pilot is required to appeal to the Director within 60 business days of the date the pilot association issues the invoice. We clarify that the pilot association may also apply the charge to the vessel owner, Master, or agent thereof, because it is not always the Pilot who applies the charge. The appeal continues to be for the Director to issue an advisory opinion as to whether the disputed rate or charge is a prohibited charge or incorrectly assessed or calculated charge.

In paragraph (b), the vessel owner, vessel charterer, an agent, or an employee empowered to speak on behalf of the owner or an agent delivers the appeal to the Director in the form of official correspondence. The rule requires that the appeal correspondence describes the pilotage services, and that it exacts the disputed charges, the regulatory citation for the dispute, and the requested resolution.

Paragraph (c) also requires the owner or agent to provide the pilot association with a copy of the appeal, and to inform them that the disputed charges have been sent to the Director for an advisory opinion.

The association has up to 20 business days to provide the Director and the entity that provided the complaint with any further data or arguments in defense of the disputed charges. We clarify that they have 20 business days, starting upon receipt of the notice of appeal from the charterer or owner. We also remove “rates” from the subject of a dispute because the Pilots and associations do not create or set the rates; the Coast Guard sets the rates through an annual rulemaking.

In paragraph (e), we add a timeline of up to 30 business days for the Director to issue an advisory opinion. We remove the express recital that the Director considered all relevant material. Per current paragraph (e), the advisory opinion must address the disputed rates and charges, discuss the facts and information provided by both parties, and include a statement of opinion, so a recital that the Director considered the material is unnecessary.

If the Director’s advisory opinion finds the disputed rates or charges are prohibited, the association currently has a reasonable time, but not more than 30 business days, to return the amount of

disputed charges, as per the advisory opinion. We revise the deadline to say the association must issue any refund, according to the advisory opinion, within 30 business days.

If the pilot association or the vessel owner feels that the advisory opinion is incorrect, under new paragraph (h), they can appeal the advisory opinion to the Director of Marine Transportation Systems (CG–5PW). The pilot association can submit an appeal for adjudication of the advisory opinion within 10 business days of receiving the original advisory opinion.

§ 401.450 Pilot Change Points

In paragraph (b) of this section, the Coast Guard removes the effective date for the addition of change point, Iroquois Lock. The change point went into effect on October 2, 2017, to provide enough time for the association to hire more Pilots. Since the effective date has passed, and the change point is currently in use, we remove the start of the effective date, per GLPAC recommendation 1 from the GLPAC 2017 Annual Meeting on September 26, 2017.¹² In paragraph (b), we also update the location of the change point for the Iroquois Lock. The change no longer happens between Iroquois Lock and the area of Ogdensburg, NY on the St. Lawrence River; the Pilot exchange now takes place in the Iroquois Lock.

In paragraph (i), the Coast Guard updates change point “Gros Cap” to “Buoy 33” of the St. Marys River, Point Iroquois. The GLPAC created a subcommittee to discuss all the pilot change points in the St. Lawrence Seaway and Great Lakes system. They found that Gros Cap was too far out of the St. Marys River, and weather conditions created unsafe conditions for the pilot boat to transfer Pilots. Buoy 33 of the St. Marys River is a better harbor to transfer Pilots, as it is safer for the Pilots to transit up and down the ladders of the vessels. This change is from GLPAC recommendation 1 from the GLPAC 2017 Annual Meeting on September 26, 2017, and conforms to current practice.¹³

§ 401.510 Operation Without Registered Pilots

The Coast Guard removes outdated regulations in paragraphs (b)(3) through (7) of this section, which were codified when both the Department of Commerce and the Coast Guard had regulatory authority over U.S. pilotage services.

¹² Meeting Minutes from the GLPAC 2017 Annual Meeting on September 26, 2017 are available in the docket.

¹³ *Id.*

¹¹ 2018 September Meeting Minutes, *supra* note 7.

From 1960 to 1967, primary responsibility for Great Lakes pilotage resided with the Department of Commerce. As the Coast Guard is now the sole Federal agency responsible for enforcing the Act, these regulations are unnecessary or cumbersome. And, because all the regulatory authority is now under the Coast Guard, we can coordinate more effectively and efficiently with Coast Guard District 9 than was possible when the authority was split between the Coast Guard and the Department of Commerce.

The regulations in § 401.510, which address operation without Registered Pilots, is significantly streamlined to reflect the current operation requirements. For example, if a Pilot is not available when needed, the Director's pilotage office can coordinate with Coast Guard District 9 much more effectively, because everything is under one agency. The 6-hour rule in current paragraphs (b)(3) and (4) has not been used since the late-1980s or early-1990s. The 6-hour period was intended as a buffer to allow the Coast Guard time to evaluate a situation before concurring with the Department of Commerce's desire to order a Pilot off their rest period. The Coast Guard monitors traffic throughout the 2,300 nautical miles in the Great Lakes system for compulsory pilotage and is now able to make these decisions in real time.

We delete paragraph (b)(5) because the language is obsolete and outlines practices that are no longer relevant to the modern pilotage industry. The decision as to whether a vessel can proceed without a Pilot rests solely with the Director. It does not require the concurrence of the Coast Guard officer to whom the violation was reported. Removing this paragraph from the CFR will prevent confusion by removing instructions that are contrary to the practices followed by modern-day Pilots.

We also delete paragraph (b)(6), which requires a pilotage pool to obtain verification from the Canadian Supervisor of Pilots that they do not have a Pilot available, for the same reasons.

The parts we retain in existing paragraphs (b)(1), (2), and (8) outline the Director's authority to allow a vessel to depart without a Registered Pilot, and sufficiently articulate that the Director will make each decision on a case-by-case basis. The Director continues to obtain Coast Guard District 9 concurrence before providing this information to the vessel.

§ 401.710 Operating Requirements for Holders of Certificates of Authorization

We update the reference in this section to the Memorandum of Understanding (MOU) to reflect the most current version of this Memorandum with the Canadian Government. The updated version is the "Memorandum of Understanding, Great Lakes Pilotage, Between The United States Coast Guard and The Great Lakes Pilotage Authority," effective September 19, 2013, and can be found in the docket. The previous version mentioned in this section was executed in 1970 and is no longer current.

§ 402.210 Requirements and Qualifications for Registration (Medical Requirements)

The Coast Guard revises the language in this section to align the medical and vision requirements for Apprentice Pilots, United States Registered Pilots, and Temporary Registered Pilots with the existing standards for a mariner medical certificate. There is no reason to duplicate the medical requirements in the pilot regulations that already exist in 46 CFR part 10, subpart C. Aligning these regulations reduces the time and burden on Pilots having to comply with regulations in two separate parts of the CFR, per GLPAC recommendation 7 from a subcommittee meeting on April 11, 2018.¹⁴ We revise the requirements in this section to say that United States Registered Pilots, Apprentice Pilots, and Temporary Registered Pilots must meet the medical and physical standards for a mariner medical certificate in accordance with 46 CFR part 10, subpart C, and remove the requirements from paragraph (b), regarding disease and impairment, and from paragraph (c), regarding vision. 46 CFR part 10, subpart C sufficiently covers these medical requirements for Pilots. Pilots are still required to meet the annual physical examination requirements in 46 CFR 11.709.

The Coast Guard is also updating this section to remove the requirement that the examination be performed by a licensed medical doctor. A licensed Nurse Practitioner, a licensed Physician Assistant, or a licensed Medical Examiner may perform the required examination, in addition to licensed medical doctors. The text in § 10.302(b) is also updated to align with this change.

¹⁴ Meeting minutes from the April 11 2018 meeting of the GLPAC Regulatory Reform Subcommittee are available in the docket.

§ 402.220 Registration of Pilots

In this section, we update the terminology for "Apprentice Pilot" and "minimum number of round trips" to reflect changes made throughout part 401. In paragraph (a), we clarify that the pilot association training committee, pilot association president, or Director may require additional round trips. The additional rounds trips are as needed to demonstrate proficiency in a specific waterway or port to ensure maritime safety. We also remove the 1-year time limit to complete the round trips, because of limited vessel traffic in some districts and ports, meaning that some Apprentice Pilots are not able to complete the required number of training trips within 1 year. We include a caveat that the minimum number of round trips listed in the regulations, or in an Apprentice Pilot's individual training plan, does not guarantee advancement to Full Registration. This way, the pilot association and the Director can reserve the discretion to require additional round trips when necessary.

The Coast Guard removes foreign language requirements from § 402.220(b)(5) and knowledge of foreign-made navigational equipment from § 402.220(b)(10). The current pilotage regulations in paragraph (b)(5) require United States Registered Pilots to be able to provide "[instructions] in basic helm and engine telegraph orders in Greek, Spanish, German, and Italian languages." These outdated foreign language requirements and instructions are no longer necessary or enforced because they have been superseded by international treaty requirements. Under Chapter 5, Regulation 14, paragraph 4 of the International Convention for the Safety of Life at Sea (SOLAS), all ships are required to use English as the working language for bridge-to-bridge and bridge-to-shore safety communications, as well as for communications between the Pilot and the bridge watchkeeping personnel. This change is in accordance with GLPAC recommendations 2 and 3 from the subcommittee meeting on April 11, 2018.¹⁵

In addition, we update the reference to the 1977 version of the MOU referenced in this section to reflect the most current issue of this Memorandum. The updated version is the "Memorandum of Understanding, Great Lakes Pilotage, Between The United States Coast Guard and The Great Lakes Pilotage Authority," effective September

¹⁵ *Id.*

19, 2013. The MOU can be found in the docket.

§ 402.320 Working Rules

The Coast Guard removes the working rule references in paragraphs (a)(1) through (4), and instead provides an email address where the public may request a copy of the approved working rules for each district. Each association updates its working rules frequently. It is impractical for the Coast Guard to issue regulations to update this section every time an association issues new working rules. To receive accurate information, the public can request the most current copy of the working rules by emailing the Coast Guard.

E. Technical Revisions Throughout Parts 401 and 402

Throughout parts 401 and 402, this final rule changes most instances of “shall” to “must” to conform to plain language guidelines. We change instances where the regulations require the Director or the Coast Guard to act from “shall” to “will” to clearly indicate how the Coast Guard will respond. However, we change instances where the Director or the Coast Guard needs to reserve discretion in issuing certain endorsements or decisions from “shall” to “may.”

We also change uses of “Registered Pilot” within the text of the regulations to specify exactly which phases of Pilot registration are meant, and to align these references with defined terms. We update all references to “pool” to “pilotage pool” to conform to the new definition for pilotage pool.

Additionally, in several sections, we update the mailing addresses in the regulations for the Great Lakes Pilotage Office to our current address: Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave. SE, Mail Stop 7509, Washington, DC 20593–7509.

In certain places in the regulations, we replace “Commandant” with “Director” for decisions that are made, in practice, by the Director. This change clarifies the procedures and expectations for the public. For example, we change § 401.220(b), because the Director prescribes the minimum number of round trips and written examination for Full Registration. These changes reflect current practice.

In section 401.250, we removed the word “license” as this term is not used in this context any longer. Mariners are given “certificates with endorsements.” Another nomenclature change throughout parts 401 and 402 is changing instances of “his” to “they” or “their” to be gender inclusive.

We make several technical revisions and nomenclature changes in the Administrative Law Judge decision sections in 46 CFR part 401, subpart F, including sections 401.645 and 401.650. There are no substantive changes in subpart F.

This final rule also removes outdated references to Title 52 of the Revised Statutes and replaces them with the current statutory requirements for Great Lakes pilotage, Title 46 of the United States Code. Public Law 98–99, 97 Stat. 558 consolidated these statutory requirements into 46 U.S.C. on August 26, 1983.

VI. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing

Regulatory Review), and Executive Order 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, OMB has not reviewed this rule. A regulatory analysis (RA) follows. None of the public comments prompted changes to the methodology used for the regulatory analysis. Further, there are no recent wages available at the time of the final analysis. Therefore, the regulatory analysis for this final rule is as published in the NPRM with no changes.

Affected Population

The affected population for this rule includes an average of 51 U.S. Great Lakes Pilots, 9 Apprentice Pilots, and 3 Temporary Registered Pilots over a period of 5 years (2018–2022), all represented by 3 pilot associations. Table 1 shows the population from 2018 to 2023, using projections provided by the pilot associations published in the annual ratemaking for each year. Some of the changes detailed below impact a subset of this population, in which case we later detail the average of that subset, along with the cost estimate. Unless otherwise noted, the change impacts the entire affected population equally.

TABLE 1—AFFECTED POPULATION 2018–2023

	Pilots	Temporary Registered Pilots	Apprentice Pilots	Total
2023	56	3	6	65
2022	51	2	9	62
2021	54	3	8	65
2020	52	3	13	68
2019	51	3	8	62
2018	49	3	7	59
Average (2018–2022)	51.4	2.8	9	63.2

* **Note:** Data provided above for each year (inclusive of Year 2023) are projections based on pilot association estimates. We have chosen to draw the average from 2018–2022.

Costs

Most of the cost impacts for this rule have already been realized by industry. As a result of the 2018 ratemaking final rule, a new staffing model was established, and updates to the Great Lakes Pilotage Management System (GLPMS) data management system occurred. 2018 also saw the Director provide industry and associations informal guidance on many of the cost provisions found in this rulemaking. This informal guidance directly

impacted current industry practices referenced in this rulemaking.

Therefore, to provide a comprehensive estimate of the impacts of this rulemaking, the Coast Guard utilizes two baselines, a “Pre-Guidance” baseline” and a “No Action” baseline. The Pre-Guidance baseline captures costs across two different time horizons. First, it provides transparency regarding costs realized from 2018–2022 due to informal guidance becoming industry practice. Second, it captures new cost impacts across a 10-year period of

analysis from 2023–2032 that stem from this rulemaking. Therefore, the entire period of analysis for the Pre-Guidance baseline is 2018–2032. The No Action baseline represents the current state of the world, as if there were no rulemaking. Quantifying costs against the No Action baseline entails including only costs directly attributable to this rule and excludes any costs derived from 2018 guidance. The period of analysis for costs relative to the No Action baseline is 2023–2032. See table 2 for a visual depiction of the baselines.

Table 2: Visual Depiction of No Action and Pre-Guidance Baselines

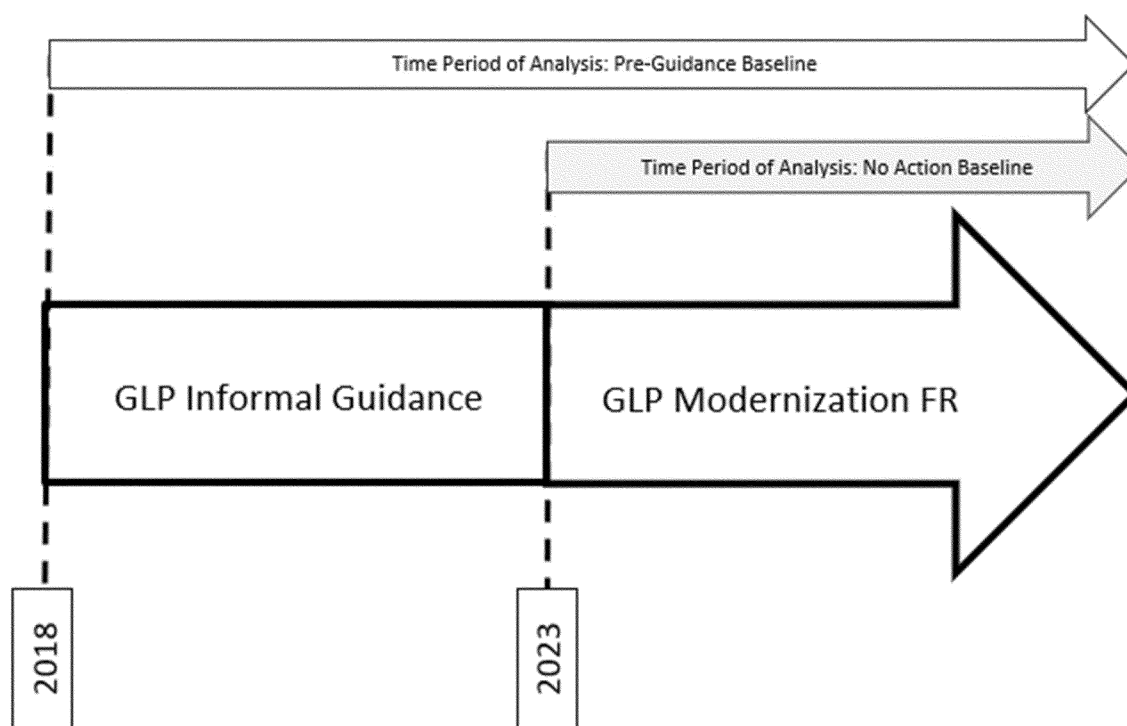


Table 3 shows the summary of net costs, broken down by each of the two baselines. The figures shown for each

baseline are in 2022 dollars and are discounted at 7 percent.

TABLE 3—SUMMARY OF NET COSTS BY BASELINE
[2022 Dollars]

	Pre-Guidance baseline (2018–2032; discounted 7%)	No Action baseline (2023–2032; discounted 7%)
Net Private Costs to Industry	Net Costs to Industry: (\$720,755.13)	Net Costs to Industry: (\$834,809.05)
	Annualized Net Costs to Industry: (\$56,422.19)	Annualized Net Costs to Industry: (\$118,858.03)
Net Costs to Government	Net Costs to Government: \$12,540.65	Net Costs to Government: \$0.00
	Annualized Net Costs to Government: \$981.71	Annualized Net Costs to Government: \$0.00
Total Net Costs	Total Net Costs: (\$708,214.47)	Total Net Costs: (\$834,809.05)
	Annualized Net Costs: (\$55,440.48)	Annualized Net Costs: (\$118,858.03)

* **Note:** Components may not add to the totals due to rounding.

The no-cost category, summarized in table 4, includes changes that have no cost, because the change is administrative where the regulatory text needs revision for clarity to reflect reorganization of the text. It also includes changes that result in no costs for either baseline, where the

substantive action occurred prior to 2018 (through either existing regulatory text or longstanding guidance). For many of the cost items, the affected population already realizes the impact of the changes from prior ratemakings and general changes to industry's current practice. Certain items in table

4 solely represent information collection costs, rather than new regulatory costs. Note that information collection costs include any cost of ongoing reporting or recordkeeping that must be submitted to the Coast Guard.

TABLE 4—SUMMARY OF NO-COST CHANGES

CFR section	Description of change	Reason for no cost	Benefits
Purpose: § 401.100	Adds the word "pilotage" to clarify the part relates to the creation of "pilotage pools".	This is an administrative change; pilotage is an older term from the 1960's, whereas pilotage pools are more commonly used today, but both refer to the same thing.	Further clarifies the purpose of the section and reduces confusion.
Purpose: § 401.100	Adds text to clarify that "Registered Pilots" refers to "United States Registered Pilots".	This is an administrative change that makes explicit that the regulation does not include Canadian Pilots, which is implicit based on the contextual language.	Further clarifies the purpose of the section and reduces confusion.
Definitions: § 401.110	Removes numbering of definitions and arrangement in alphabetical letter.	This is an administrative change	Eases finding definitions, increasing readability and clarity.
Definitions: § 401.110	Adds the definition for "Applicant" to clarify that an "Applicant" is a person who has submitted a Form CG-4509 to the Director to be considered for placement in an approved U.S. Great Lakes pilot training and qualification program at one of the established pilotage pools.	This is an administrative change that distinguishes an applicant awaiting an acceptance decision from an Applicant Trainee accepted into training.	Further clarifies the differences between an "Applicant," "Applicant Trainee," and "Apprentice Pilot", which were previously not distinguished but all referred to synonymously as "applicant".
Definitions: § 401.110	Modifies the definition of "Applicant Trainee" to clarify that an Applicant Trainee is a person approved and certified by the Director, who is participating in an approved U.S. Great Lakes pilot training and qualification program but does not qualify as an Apprentice Pilot.	This distinguishes an Applicant Trainee accepted into training from an applicant awaiting an acceptance decision.	Further clarifies the differences between an "Applicant," "Applicant Trainee," and "Apprentice Pilot", which were previously not distinguished but all referred to synonymously as "applicant".
Definitions: § 401.110	Removes the last sentence from the definition of Apprentice Pilot, "This definition is only applicable to determining which pilots may be included in the operating expenses, estimates, and wage benchmark in §§ 404.2(b)(7), 404.103(b), and 404.104(d) and (e)".	The base definition of Apprentice Pilot is unchanged.	Clarifies how this definition is used in conjunction with the new definitions of Applicant and Applicant Trainee, which were not used when the term Applicant Pilot was first introduced.
Definitions: § 401.110	Modifies the definition of "association" to clarify that the Director of Great Lakes Pilotage issues a Certificate of Authorization, not the Great Lakes Pilotage Branch.	This is an administrative change that does not change the method of authorization but clarifies the source of authority.	Adds additional clarity to the source of the Director's authority and reduces confusion on what actions are the responsibility of the Coast Guard and what is the responsibility of the Director.
Definitions: § 401.110	Updates the abbreviation of "Commandant" from "CG-00" to "CCG".	This is an administrative change	Adds additional clarity and reduces confusion.
Definitions: § 401.110	Adds a definition for "chemical test"	This is an administrative change. The new definition is the same as the existing definition in 46 CFR 4.03-7.	Adds additional clarity and reduces confusion.
Definitions: § 401.110	Updates the address for the Director from "Commandant (CG-WWM-2), to Attn:" to "Director".	This is an administrative change	Adds additional clarity and reduces confusion.
Definitions: § 401.110	Updates the definition for "comparable experience".	This is an administrative change. It clarifies that experience similar to experience on a vessel of 4,000 GT or over can be used to qualify as an applicant.	It has the unquantifiable benefit of expanding the number of potential applicants using experience from other areas of the U.S. to qualify as an applicant. To date, this has not occurred.
Definitions: § 401.110	Adds the definition of "Full Registration" for additional clarity.	This is an administrative change that does not change the requirements to achieve Full Registration, but distinguishes the different types of registration.	Further clarifies the difference between Full, Limited, and Temporary Registrations.
Definitions: § 401.110	Updates the definition for "Limited Registration".	This is an administrative change that distinguishes from a Temporary Registration where, previously, "temporary" referred to multiple types of registration. This does not change the current requirements for receiving any of the types of registration.	Further clarifies the difference between Full, Limited, and Temporary Registrations.
Definitions: § 401.110	Creates a definition for "marine accident"	This is an administrative change that distinguishes between reportable marine casualties that are sent to the Coast Guard under 46 CFR part 4, and accident reports of those casualties that are sent to the Director if the casualty affects pilotage.	Further clarifies 46 CFR 401.260(a), incident reporting requirements for Pilots on the Great Lakes. The requirement to notify the Director is not new, but differentiating the kinds of reports makes it clearer to whom the notice must be given.

TABLE 4—SUMMARY OF NO-COST CHANGES—Continued

CFR section	Description of change	Reason for no cost	Benefits
Definitions: § 401.110	Creates a definition for “minimum number of round trips”.	This does not change the existing minimum requirements, which are detailed in 401.220(b). This addition clarifies that the number of trips applies to trips conducted by an Apprentice Pilot, not by an Applicant Trainee.	Further clarifies round-trip requirements for Apprentice Pilots to be in line with added distinctions between Apprentice Pilots and Applicant Trainees.
Definitions: § 401.110	Renames the term “pool” to “pilotage pool” and adds additional text to the definition.	This is an administrative change that better aligns with current authorization language..	Further clarifies that pilotage pools are organizations holding a Certificate of Authorization issued by the Director, which are the three existing pilot associations for each of the three districts.
Definitions: § 401.110	Adds additional text to the term “rate computation definitions” to clarify that these definitions are used to determine the weighting factors in the rate.	This is an administrative change	Further clarifies how the weighting factors are calculated.
Definitions: § 401.110	Adds definition for “round trip”	This is an administrative change	Further clarifies what is considered a round trip.
Definitions: § 401.110	Adds definition for “Semi-annual Performance Evaluation Report”.	This is an administrative change	Further clarifies the Semi-annual Performance Evaluation Report.
Definitions: § 401.110	Adds the additional text to the definition of “United States Registered Pilot”.	This is an administrative change	Updates text to reference current U.S. Code sections and mariner credentialing requirements.
Application for registration: § 401.200.	Adds email address and physical mailing address for submission of Form CG–4509.	This is an administrative change	Adds email address and physical mailing address to make it easier for the regulated public to submit the form.
Application for registration: § 401.200.	Removes text requiring two photographs be submitted with Form CG–4509.	Form CG–4509 already requires the submission of two signed photographs. This change merely removes duplicative text, not the requirement to submit the photographs.	Adds clarity by removing duplicative text.
§ 401.210(a)	Changes “Requirements and qualifications for Registration” to “Requirements and qualifications for Full Registration”.	This is an administrative change	Further clarifies Full Registration in comparison to requirements for new definitions.
§ 401.210(a)	Adds the word “fully”	This is an administrative change	Adds clarity by matching title to altered text in the body paragraph.
§ 401.210(a)(1)	Adds clarifying text updating authority from “revised statutes” to specify 46 CFR part 11, removing “license or MMC” to read “MMC with an officer endorsement”, and replacing “tows” with “barge” in “integrated tug and barge”.	This change removes outdated language, and it updates to the most current authority citations to provide clarity. However, it does not change existing requirements.	Adds clarity by making the citation more specific. Mariners are no longer issued licenses but credentials with endorsements. This change replaces outdated language with more current language and authorities. The emphasis on barges clarifies that Pilots must be credentialed deck officers, and the tonnage requirements apply to an integrated tug and barge, not the aggregate tonnage of a tug and tow.
§ 401.210(a)(4)	Adds “applicable” to “applicable medical requirements and standards” and the CFR citation to the existing requirements.	This is an administrative change as the requirements in the cited CFR section are unchanged.	Improves clarity of the source of requirements.
§ 401.210(a)(6)	Removes text specifying a requirement to hold a TWIC in addition to an MMC.	TWICs are already required to hold an MMC, so specifying both is redundant.	Increases clarity and readability of the CFR by removing unnecessary text.
§ 401.210(a)(7)	Removes unnecessary text and changes the term “Applicant Pilots” to “Apprentice Pilots”.	This is an administrative change necessary to make text consistent with new, added definitions in other sections that clarify between applicants, Applicant Trainees, and Apprentice Pilots.	Increases clarity and readability of the CFR by removing text specifying application for pilotage, which is already specified in the title of the section. Increases clarity by changing “Applicant Pilots” to “Apprentice Pilots” to be consistent with definition changes.
§ 401.210(a)(8)	Adds new paragraph requiring the individual to meet the chemical testing requirements in 46 CFR part 16 for Full Registration.	This is an administrative change that integrates references to the existing source of requirements rather than restating requirements. This is an existing requirement for all mariners holding an MMC, per 46 CFR 10.209(h) and 46 CFR part 16.	Adds clarity by making citation more specific and eliminating the need to update text when parts of 46 CFR part 16 change.
§ 401.211	Changes text from “Applicant Pilots” to “Apprentice Pilots” to be consistent with new terms.	This is an administrative change necessary to make text consistent with new definitions added in other sections.	Adds clarity and consistency for references to new definitions.
§ 401.211(b)	Creates new paragraph (b) containing current text.	This is an administrative change necessary to detail changes in the organization of the text.	Adds clarity and better readability by making requirement list stand out within the paragraph.
§ 401.211(b)(3)	Adds citation to 46 CFR part 11.480 to clarify requirements to obtain Radar Observer qualification but does not change the existing requirement to hold a Radar Observer qualification.	Pilots must already hold a Radar Observer qualification.	Adds clarity by making citation more specific and eliminating the need to update text when parts of 46 CFR part 11.480 change.
§ 401.211(e)	Adds address for submission of Form CG–4509.	This is an administrative change	Adds email and mailing address to make it easier for the regulated public to submit forms.
§ 401.211(e)	Adds text requiring two photographs be submitted with Form CG–4509 to provide clarity since § 401.200 no longer requires it.	This is an administrative change that does not alter the existing requirements of Form CG–4509.	Clarifies the requirements for submitting Form CG–4509 where methods of submission are discussed.

TABLE 4—SUMMARY OF NO-COST CHANGES—Continued

CFR section	Description of change	Reason for no cost	Benefits
§ 401.211(f)	Creates new paragraph (f), modifying text to clarify who may be issued a U.S. Coast Guard Apprentice Pilot ID Card. Replaces the terms “applicant” and “Applicant Pilot” with “Apprentice Pilot”.	This is an administrative change	Improves clarity and makes text consistent with definitions.
§ 401.211(f)(1)	Adds new paragraph stating the Director may set an expiration date for the Apprentice Pilot ID Card.	This is an administrative change	Improves clarity.
§ 401.211(f)(4)	Minor wording changes	This is an administrative change	Improves clarity by specifying the ID card is withdrawn.
§ 401.211(i)	New paragraph requires Apprentice Pilots to be enrolled in the association’s chemical testing program.	This change simply updates text, as this is already required as part of casualty reporting.	Improves clarity of applicability to make all text consistent across new sections that specify requirements for applicants, Applicant Trainees, and Apprentice Pilots.
§ 401.211(k)	New paragraph outlines requirements for Full Registration, including passing an exam, a positive endorsement from the association, and the determination by the Director of the need for an additional Pilot.	This change updates text to describe current practice. The impact of the change from prior text has already been realized in 401.220(b).	Creates clarity by detailing section title for Apprentice Pilot to be consistent with new terms.
§ 401.214	Adds new section with requirements for Applicant Trainees.	This is an administrative change to separate requirements to Applicant Trainees and Apprentice Pilots in accordance with definitions.	Creates clarity by codifying requirements for Applicant Trainees in a separate, new section distinct from Apprentice Pilots, so that requirements are in clearly distinct sections and consistent with new terms. The requirements themselves are not new, as they were in place when all stages of training were referred to indistinguishably as applicants.
§ 401.214(b)	New paragraph adding qualifications to be considered an Applicant Trainee.	This is an administrative change necessary to distinguish applicants from Applicant Trainees. Use of this term is already common practice.	Creates clarity by listing requirements in clearly distinct sections and consistent with new terms. The requirements themselves are not new, as they were in place when all stages of training were referred to indistinguishably as applicants.
§ 401.214(e)	New paragraph clarifies that Applicant Trainees must submit an application on Form CG-4509.	Applicant Trainees have already been submitting these forms, but the regulatory text did not reference Applicant Trainees specifically. This practice predates any guidance issued in 2018 and is not a result of this rulemaking. This new clarifying paragraph codifies a longstanding practice. Therefore, this is a no-cost change in both our Pre-Guidance baseline (2018–2032) and our No Action baseline (2023–2032).	Improves clarity by codifying the requirement that Applicant Trainees must submit an application. The requirement itself is not new and is a long-standing practice.
§ 401.220(b)	Changes the term “Applicant Pilot” to “Apprentice Pilot”.	This is an administrative change necessary to make text consistent with new definitions added in other sections.	Creates clarity by listing requirements in clearly distinct sections and consistent with new terms. The requirements themselves are not new, as they were in place when all stages of training were referred to indistinguishably as applicants.
§ 401.220(b)(2)	Clarifies that Apprentice Pilots, not Applicant Pilots, must complete the approved course of instruction prescribed by the association authorized to establish the pilotage pool.	This is an administrative change necessary to make text consistent with new definitions for applicant, Applicant Trainee, and Apprentice Pilot.	Increases clarity of the CFR to specify where “Apprentice Pilot” replaces the previous term “Applicant Pilot”
§ 401.220(b)(3)	Minor wording changes to improve clarity and readability.	This is an administrative change necessary to make text consistent with new definitions added in other sections.	Removes outdated and gendered references consistent with changes in other sections. The change clarifies that the written exam comes after the requirements set forth in (b)(1) and (b)(2).
§ 401.220(c)	Changes wording to be consistent with new definitions of Apprentice Pilot and Applicant.	This is an administrative change necessary to make text consistent with new definitions added in other sections.	Increases clarity of the CFR to specify where “Apprentice Pilot” replaces the previous term “Applicant Pilot”.
§ 401.220(d)	Changes wording to be consistent with new definitions and removes outdated reference to Title 52 of Revised Statutes.	This is an administrative change necessary to make text consistent with new definitions added in other sections.	Increases clarity of the CFR to specify where “Apprentice Pilot” replaces the old language and remove gendered references.
§ 401.220(e)	Deletes paragraph	This is an administrative change	Increases clarity of the CFR necessary to be consistent with new sections.
§ 401.222	Adds new section to move Temporary Registration requirements to their own section for clarity.	This is an administrative change that updates organization of the part.	Creates clarity by making requirements clear and consistent with a section for each category of applicant, Applicant Trainee, Apprentice Pilot, Pilot, and Temporary Registered Pilot.
§ 401.222(a)	New paragraph that clarifies who may hold a Temporary Registration.	This is an administrative alteration that changes organization of the text but does not change the requirements.	Creates clarity by making requirements clear and consistent with a section for each category of applicant, Applicant Trainee, Apprentice Pilot, Pilot, and Temporary Registered Pilot.
§ 401.230(a)	Minor wording change, updates statutory reference.	This is an administrative change necessary to make text consistent with new definitions added in other sections.	Updates text to reference U.S. Code to improve clarity.

TABLE 4—SUMMARY OF NO-COST CHANGES—Continued

CFR section	Description of change	Reason for no cost	Benefits
§ 401.230(a)	Updates statutory references and makes minor wording changes to improve clarity and readability.	This is an administrative change removing outdated references.	Improves clarity of the CFR.
§ 401.230(c)	Modifies to include more up-to-date terms and methods of copying documents.	This is an administrative change necessary to make text consistent with new definitions added in other sections.	Increased clarity as “Photostat” is not a common term.
§ 401.240(d)	Minor wording changes, replaces the word “Commandant” with “Director”.	This is an administrative change	Improves clarity by better matching the language used by industry.
§ 401.250(d)	Removes the word “license”	This is an administrative change that does not change the requirement to have an MMC.	Improves clarity and eliminates confusion as to what “license” refers to.
§ 401.260(a)	Clarifies reporting requirements also apply to Pilots on a Limited or Temporary Registration and other minor wording changes.	This is an administrative change necessary to make text consistent with new definitions added in other sections.	Creates clarity by making requirements clear and consistent with new terms.
§ 401.260(a)	Reformats report contents from a paragraph to a numbered list.	This is an administrative change reflecting organization of text.	Improves clarity by making the list of requirements more legible.
§ 401.260(a)	Modifies 401.260(a) to add clarity regarding the existing practice of receiving marine accident reports. It outlines that a written report is required when a marine incident occurs while an Apprentice Pilot, Apprentice Pilot with Limited Registration, United States Registered Pilot, or Temporary Registered Pilot is providing pilotage services.	This practice predates any 2018 guidance. The Director’s office already receives these reports and does not expect the trend in reports received to change as a byproduct of this rulemaking. The submission requirement for these reports is found in § 401.260 and originated in 31 FR 9065. ¹⁶ Therefore, it is a no-cost change in both our Pre-Guidance baseline (2018–2032) and our No Action baseline (2023–2032).	Improves clarity on the format of the submission and when the marine accident report is required.
§ 401.260(a)(7)	Adds requirement for Pilots to share the results of post-casualty drug and alcohol tests in the notice to the Director.	This does not change the requirement for testing governed by 46 CFR 4.06–3. Rather, § 401.260(a)(7) details what information must also be shared with the Director if a reportable casualty affects pilotage.	Improves clarity by making requirements easier to find in an explicit list.
§ 401.420(c)	Minor wording changes, clarifies that the vessel Master determines weather delays.	This is an administrative change since this is already industry practice.	Further clarifies who determines whether an interruption is caused by weather.
§ 401.425	Removes provisions governing Canadian approval of double pilotage.	This is an administrative change since the Director does not have to confer with the Canadians to approve pilotage and has not had to. The reference to Canada was erroneous.	Adds additional clarity, as the Director approves double pilotage for the United States Pilots but has no jurisdiction over Canadian Pilots. Canadian Pilots base their decisions on different criteria, though both countries may notify each other of their decision to approve double pilotage to assist in pilotage assignments.
§ 401.425	Removes the undesignated waters of Lake Erie from the Southeast Shoal to Colborne restrictions and states that the Director will evaluate dual pilotage on a case-by-case basis.	This change updates text, as the Director can already require double pilotage as the situation dictates. The regulatory text was outdated, and double pilotage is allowed in this area when needed.	Improves clarity by removing outdated language.
§ 401.431(a)	Establishes a 60-business-day billing dispute deadline, minor wording changes.	There has only been one instance of a dispute longer than 60 days. We do not expect any further impacts.	Improves clarity and reduces the likelihood of a dispute occurring after the books have been closed.
§ 401.431(d)	Minor wording changes to clarify that the pilot association is the respondent, and they have 20-business days to defend disputed charges starting from when they receive the notice of appeal. Previous text listed 20 days without specifying business days or when those days would begin counting. No previous dispute exceeded 20 days.	This process predates the 2018 guidance. The ability to appeal (§ 401.431(d)) was initially added to the CFR via 29 FR 10467 (July 28, 1964). ¹⁷ No changes to this behavior occurred over 2018–2022. The Coast Guard does not expect wording changes in this rulemaking to alter behavior from the pilot association. Therefore, it is a no-cost change in both our Pre-Guidance baseline (2018–2032) and our No Action baseline (2023–2032).	Improves clarity on who is considered the respondent and the exact timeline for any pilot association wishing to defend disputed charges.
§ 401.431(e)	Minor wording changes to clarify that the Director responds with an advisory opinion within 30 working days. Previous text did not specify a specific number of days.	No cost. This process predates 2018 guidance. Section 401.431(e) was initially added to the CFR via 29 FR 10467 (July 28, 1964). ¹⁸ No changes to this behavior occurred from 2018–2022. The Coast Guard does not expect wording changes in this rulemaking to alter the Director’s behavior in responding with advisory opinions. The text simply clarifies a long-standing practice.	Improves clarity for pilot associations submitting charge disputes as to when an advisory opinion can be expected from the Director.
§ 401.431(h)	Creates new paragraph (h) that codifies the existing practice of pilot associations appealing the advisory opinion made by the Director. The regulatory text specifies that the associations may do so within 10 days of receiving the opinion.	This process predates any 2018 guidance. This paragraph is codifying this long-standing practice performed by the pilot associations. Neither the 2018 guidance nor this rulemaking substantively modifies this pilot association practice. Therefore, it is a no-cost change in both our Pre-Guidance baseline (2018–2032) and our No Action baseline (2023–2032).	Improves clarity by codifying the existing ability for pilot associations to appeal the advisory opinion made by the Director. The practice itself is not new and is a longstanding practice.

TABLE 4—SUMMARY OF NO-COST CHANGES—Continued

CFR section	Description of change	Reason for no cost	Benefits
§ 401.450(b)	Removes the effective date for the establishment of the pilot change point at Iroquois Lock.	This is an administrative change since the date has passed.	Improves clarity, as the text is outdated from when change point was first introduced.
§ 401.450(i)	Replaces Gros Cap with Buoy 33, St. Marys River, Point Iroquois.	This moves the change point to a more convenient location; it does not change the number of change points.	Makes text consistent with change points currently used. This change point is a new location in the river, closer to the locks and a safer location to transfer Pilots on and off the pilot boat. Gros Cap was too far out in the bay (about 2 nautical miles), and the transfers were affected by the weather and transit time.
§ 401.450(k)	Replaces Gros Cap with Buoy 33	See above	See above.
§ 401.510(b)(3)–(7)	Deletes outdated text	This is an administrative change removing outdated references that refer to old systems of communication in paragraph (b)(3) and references to when the Coast Guard was part of the Department of the Treasury in paragraphs (b)(4)–(7).	Improves clarity of the CFR by removing outdated text.
§ 401.710(b)	Updates MOU reference and date	This is an administrative change removing outdated references.	Improves clarity of the CFR.
§ 402.220(a)	Adds discretion for the Director or association to require additional round trips in a particular area as part of meeting the overall minimum number of round trips requirement.	This codifies an existing practice that does not change the total number of trips to meet the minimum but may change where those trips occur to ensure that the experience in training is representative of future operations.	Improves clarity of the CFR.
§ 402.220(a)(5)	Removes section describing requirement for training in foreign languages.	This is an administrative change removing outdated references as these courses are no longer required under the Standards of Training, Certification, and Watchkeeping (STCW).	Improves clarity of the CFR.
§ 402.220(a)(7)	Updates MOU reference	This is an administrative change removing outdated references.	Improves clarity of the CFR.
§ 402.220(a)(10)	Removes paragraph	This is an administrative change removing outdated references.	Improves clarity of the CFR.
§ 402.320(a)	Removes reference to each working rule individually and instead makes all rules available electronically by email request.	This is an administrative change, as the same information remains available. The Coast Guard has never received a request for a paper copy of a working rule.	Improves clarity and electronic access of information by the public and eliminates the need to provide a technical amendment whenever the date of a working rule changes.

The information collections in this final rule are actions that the affected population of Pilots and pilot associations have already complied with in prior years. Prior to this rulemaking, the Coast Guard had not codified the

burden for these collections into the information collection request for the Great Lakes Pilotage Rate Methodology (OMB Control Number 1625–0086).¹⁹ We present details on past reporting and estimated future regulatory costs to

industry in table 5, broken down by each of the two baselines. Table 5 also details relevant regulatory costs that concurrently act as information collection costs.

TABLE 5—SUMMARY OF COSTS BY BASELINE
[2022 Dollars, discounted at 7%]

CFR section	Description of change	Pre-Guidance baseline (2018–2032)	No action baseline (2023–2032)
Definitions: § 401.110.	Creates a definition for “individual training plan.” Prior to 2018, associations used the same template plan for the entire district, rather than individualizing plans.	The Coast Guard began receiving individualized training plans in 2018. Beginning in 2018, individualized training plans took 2 hours to prepare. This hour burden per training plan is expected to remain consistent (2 hours) across 2018–2032. Total Cost to Industry 2018–2032: \$10,015.59 Annualized Cost: \$784.04	No cost. No expected changes in cost from this rule when compared with cost of informal guidance issued in 2018. Our No Action baseline excludes any costs directly attributed to the guidance.

¹⁶ To access 31 FR 9065, please see https://archives.federalregister.gov/issue_slice/1966/7/1/9063-9067.pdf. Note that while the requirement is not new, a definition for “marine accident” is made for § 401.110 in this rule.

¹⁷ § 401.431(d) was initially added to the CFR via 29 FR 10467 (July 28, 1964). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7.

For more information on the history of how the requirement was redesignated and amended through the years, see <https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-D/section-401.431>.

¹⁸ § 401.431(e) was initially added to the CFR via 29 FR 10467 (July 28, 1964). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7.

For more information on the history of how the requirement was redesignated and amended through the years, see <https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-D/section-401.431>.

¹⁹ To access the Great Lakes pilotage Rate Methodology ICR, please see www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201709-1625-004.

TABLE 5—SUMMARY OF COSTS BY BASELINE—Continued
[2022 Dollars, discounted at 7%]

CFR section	Description of change	Pre-Guidance baseline (2018–2032)	No action baseline (2023–2032)
§ 401.211(g) ...	Adds new paragraph that codifies existing practice of requiring the Director to approve Apprentice Pilots individual training plans.	The Coast Guard began requiring the Director approve these individual training plans in 2018 (same year the agency began receiving the individualized training plans). Beginning in 2018, we assume that it takes the Director 30 minutes to review. This hour burden per training plan is expected to remain consistent (0.5 hours) across 2018–2032. Total Cost to Government 2018–2032: \$3,899.46. Annualized Cost: \$305.26	No cost. No expected changes in cost stemming from this rule when compared with informal guidance issued in 2018. Our No Action baseline excludes any costs directly attributed to the guidance.
Definitions: § 401.110.	Adds definition for “Temporary Registered Pilot”.	2018–2022: In the 2023 annual ratemaking, the Coast Guard utilized the definition of Temporary Registered Pilot to reduce the number of Temporary Registered Pilots projected. 2023–2032: Any further impacts will be realized through a ratemaking.	Any further impacts will be realized through a ratemaking.
§ 401.211(h) ...	Adds a new section that codifies existing practice of requiring Apprentice Pilots to have a Semi-annual Performance Evaluation Report.	This requirement began via informal guidance in 2018. An average of 5 Apprentice Pilots annually submit 18 reports on average. Submissions require 6 hours per report. A review of these reports at the Director's office takes 20 minutes (0.33 hours) per report. These hourly burdens remain unchanged across 2018–2032. Total Cost to Industry 2018–2032: \$99,875.41 Annualized Cost: \$7,818.45	No cost. No expected changes in cost stemming from this rule when compared with informal guidance issued in 2018. Our No Action baseline excludes any costs directly attributed to the guidance.
§ 401.230(d) and § 401.240(a).	Adds additional text to clarify the nature of photographs submitted to the Coast Guard. Provides clarity by using common language for “passport style” photographs that is more easily understood. The Coast Guard requires a signed photograph inserted into Certificates of Registration, as the photograph with the signature is used in making certificates. In some cases, the photograph submitted is too far away from the face of the subject, and to capture the signature a portion of the person may be cut off. This change eliminates these issues and needing new photographs to be submitted.	2018–2022: Applicants have been asked to re-submit photographs only a handful of times since 2018. 2023–2032: No cost. Potential for cost savings if the number of photographs retaken is reduced. This cost saving could not be quantified given the limited number of times a cost has been incurred to retake photographs and that cost was never quantified.	No additional cost stemming from rulemaking. Potential for cost savings if the number of photographs retaken is reduced. This cost saving could not be quantified, given the limited number of times a cost has been incurred to retake photographs, and the absence of public input on the matter. That cost was never quantified.
§ 401.260	Removes paragraph (d), which required submission of monthly availability reports.	2018–2022: No cost savings. This process pre-dates 2018 guidance and has not changed in scope during 2018–2022, due to guidance. The requirement to provide these originates in 31 FR 9065 (July 1, 1966). ²⁰ From 2018–2022, associations kept record of approximately 672 monthly availability reports each year during the 10 months between when the locks are opened and closed, for each Pilot and Apprentice Pilot on roster. 2023–2032: If Coast Guard continued to require these reports, we expect to receive 650 annually. It is estimated that each monthly report takes 2.5 hours to submit. Removing this required submission results in cost savings over 2023–2032. Total Cost Savings to Industry (2018–2032): \$(835,065.99). Annualized Cost Savings: \$(65,370.68)	Cost savings over 2023–2032 are attributed only to this rulemaking and are not a byproduct of any guidance over the 2018–2022 timeframe. Therefore, our cost savings in the No Action baseline equate to those in our Pre-Guidance baseline. Removing the submission requirement results in cost savings over the No Action baseline period of analysis (2023–2032). Total Cost Savings to Industry (2023–2032): \$(835,065.99). Annualized Cost Savings: \$(118,894.61).

TABLE 5—SUMMARY OF COSTS BY BASELINE—Continued
[2022 Dollars, discounted at 7%]

CFR section	Description of change	Pre-Guidance baseline (2018–2032)	No action baseline (2023–2032)
§ 401.431(b) ...	Changes “in writing” to “official correspondence”, and adds requirements for what information must be in the appeal, rather than Coast Guard receiving disputes in varying formats.	2018–2022: No cost. The appeal process did not originate from 2018 guidance. The ability to appeal (§ 401.431(b)) was initially added to the CFR via 29 FR 10467 (July 28, 1964). ²¹ 2018 guidance did not alter any aspect of this existing requirement. 2023–2032: With the changes, the Coast Guard estimates that forthcoming submissions will take 1 hour each, an additional 30 minutes per report. To avoid double counting an existing regulatory cost associated with these reports, the “Pre-Guidance” baseline uses 0.5 hours for the time burden. The Coast Guard estimates receiving one of these reports annually over 2023–2032. Total Cost to Industry 2018–2032: \$256.94 Annualized Cost: \$20.11	Costs over 2023–2032 are attributed only to this rulemaking and are not a byproduct of any guidance over the 2018–2022 timeframe. Therefore, our cost savings in the No Action baseline equate to those in our Pre-Guidance baseline. The changes result in costs over our No Action baseline period of analysis (2023–2032). Total Cost to Industry 2023–2032: \$256.94. Annualized Cost: \$36.58.
§ 402.210(a) ...	Adds Apprentice Pilots and Temporary Registered Pilots. Adds citation to current CFR requirements for all Pilots to pass a physical examination. Given this edition, it equates to more than an editorial change.	This requirement began via informal guidance in 2018. This change impacts mariners who submit Apprentice Pilot applications to the Director. From 2018–2022, the Coast Guard received an average of 15 such applications annually. Each medical certificate takes about 18 minutes (0.3 hours) to draft and submit. The Coast Guard expects no change in behavior or burden over 2023–2032 because of this rulemaking. Total Cost to Industry 2018–2032: \$4,162.92 Annualized Cost: \$325.88	No cost. No expected changes in cost stemming from this rule when compared with informal guidance issued in 2018. Our No Action baseline excludes any costs directly attributed to the guidance.
§ 402.210(b) ...	Removes paragraph	Cost included in change to § 402.210(a)	No cost.
§ 402.210(c) ...	Removes paragraph	Cost included in change to § 402.210(a)	No cost.

Costs: Pre-Guidance Baseline

This section outlines regulatory costs in accordance with the Pre-Guidance baseline. Therefore, costs from 2018–2022 stemming from the 2018 guidance are included, as applicable. The Coast Guard estimates that the cost over the 2018–2022 period is zero in cases where the rulemaking is (1) instituting a brand-new requirement; (2) making a substantive change to an industry practice that predates 2018; or (3) making a substantive change to an existing regulatory requirement that predates 2018. This is to avoid including new costs in 2018–2022 that are not attributable to guidance and, therefore, out of scope for this portion of the Pre-Guidance baseline’s timeframe. The Coast Guard estimates costs specifically stemming from this rulemaking in the 2023–2032 portion of the Pre-Guidance period of analysis. The overall period of analysis for the Pre-Guidance timeframe is 2018–2032.

Individual Training Plans for Apprentice Pilots

One addition to the Definitions portion of § 401.110 is the creation of a definition for “individual training plan.” Moreover, the creation of paragraph (g) in § 401.211 codifies the existing requirement for individual training plans to be submitted to the Coast Guard for each Apprentice Pilot. The Coast Guard has been receiving individualized plans since 2018 but did not previously specify in the regulatory text that plans must be individualized. Mentor Pilots generate these plans and summarize the training that Apprentice Pilots undergo to ensure that they are gaining experience in all relevant transit areas. This ensures that they are qualified for Full Registration at the end of their training. From 2018 to 2022, the Coast Guard received an average of 5 individual training plans annually, as shown in table 6. The Coast Guard estimates that it took 2 hours to generate

and submit these plans during 2018–2022. The loaded wage of Pilot submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.²²

Going forward, the Coast Guard expects to receive six plans annually, one for each of the Apprentice Pilots authorized in the 2023 annual ratemaking (88 FR 12226, Feb. 27, 2023).²³ Given that the Coast Guard is simply codifying this requirement, these individualized plans will still each take 2 hours to generate and submit from 2023–2032. With six submissions annually, the Coast Guard estimates the annual cost of requiring individual training plans for Apprentice Pilots over 2023–2032 to be \$877.99 (6 submissions × 2 hours × \$73.17). For the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$10,015.59, discounted to 7 percent, and \$784.04 annualized, as summarized in table 6.

²⁰ To access 31 FR 9065, please see https://archives.federalregister.gov/issue_slice/1966/7/1/9063-9067.pdf.

²¹ § 401.431(b) was initially added to the CFR via 29 FR 10467 (July 28, 1964). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7.

²² The base wage of Captains, Mates, and Pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series

by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

²³ <https://www.federalregister.gov/documents/2023/02/27/2023-03212/great-lakes-pilotage-rates-2023-annual-ratemaking-and-review-of-methodology>.

TABLE 6—COST OF SUBMITTING INDIVIDUAL TRAINING PLANS FOR APPRENTICE PILOTS
[Pre-Guidance; 2022 dollars]

Year	Plans	Total Pre-Guidance hours	Wage of submitter	Pre-Guidance baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2018	4	2	\$73.17	\$585.33	\$767.24	\$658.79
2019	5	2	73.17	731.66	896.31	799.50
2020	5	2	73.17	731.66	837.68	776.22
2021	3	2	73.17	439.00	469.73	452.17
2022	6	2	73.17	877.99	877.99	877.99
2023	6	2	73.17	877.99	820.55	852.42
2024	6	2	73.17	877.99	766.87	827.59
2025	6	2	73.17	877.99	716.70	803.49
2026	6	2	73.17	877.99	669.82	780.08
2027	6	2	73.17	877.99	626.00	757.36
2028	6	2	73.17	877.99	585.04	735.30
2029	6	2	73.17	877.99	546.77	713.89
2030	6	2	73.17	877.99	511.00	693.09
2031	6	2	73.17	877.99	477.57	672.91
2032	6	2	73.17	877.99	446.33	653.31
Total .....	.....	.....	.....	12,145.54	10,015.59	11,054.11
Annualized .....	.....	.....	.....	.....	784.04	798.75

* **Note:** Components may not add to the totals due to rounding.

The Coast Guard estimates that it takes 30 minutes (0.5 hours) for the Director's office to review these plans. This estimate remains consistent across 2018–2022 and 2023–2032. With 6 submissions annually, using a loaded

wage of \$113.95 for a GS–14 in-government worker,²⁴ the Coast Guard estimates the annual cost to Government of reviewing individual training plans for Apprentice Pilots over 2023–2032 to be \$341.84 (6 submissions × 0.5 hours

× \$113.95). For the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$3,899.46, discounted to 7-percent, and \$305.26 annualized, as summarized in table 7.

TABLE 7—COST TO GOVERNMENT OF REVIEWING INDIVIDUAL TRAINING PLANS FOR APPRENTICE PILOTS
[Pre-Guidance; 2022 dollars]

Year	Plans	Total Pre-Guidance hours	Wage of reviewer	Pre-Guidance baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2018	4	0.5	\$113.95	\$227.89	\$298.72	\$256.49
2019	5	0.5	113.95	284.86	348.97	311.28
2020	5	0.5	113.95	284.86	326.14	302.21
2021	3	0.5	113.95	170.92	182.88	176.05
2022	6	0.5	113.95	341.84	341.84	341.84
2023	6	0.5	113.95	341.84	319.47	331.88
2024	6	0.5	113.95	341.84	298.57	322.21
2025	6	0.5	113.95	341.84	279.04	312.83
2026	6	0.5	113.95	341.84	260.79	303.72
2027	6	0.5	113.95	341.84	243.72	294.87
2028	6	0.5	113.95	341.84	227.78	286.28
2029	6	0.5	113.95	341.84	212.88	277.94
2030	6	0.5	113.95	341.84	198.95	269.85
2031	6	0.5	113.95	341.84	185.94	261.99
2032	6	0.5	113.95	341.84	173.77	254.36
Total .....	.....	.....	.....	4,728.73	3,899.46	4,303.79
Annualized .....	.....	.....	.....	.....	305.26	407.61

* **Note:** Components may not add to the totals due to rounding.

²⁴ The loaded wage of \$113.95 (rounded) comes from the base hourly wage of \$68.55 for a GS–14 Step 5 from the DC region, multiplied by a load factor of 1.66, per [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf)

[tables/pdf/2022/DCB_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf). To calculate the load factor of 1.66, we divide total hourly compensation for workers with master's degrees as shown in table 3, \$74.80, by the average hourly wage for workers with master's degrees as shown in table 1, or

\$45.00. $\$74.80 \div \$45.00 = 1.6622$. See “Comparing the Compensation of Federal and Private Sector Employees, 2011–2015,” <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf>.

Semi-Annual Performance Evaluation Reports for Apprentice Pilots

The creation of paragraph (h) in § 401.211 requires associations to submit Semi-annual Performance Evaluation Reports to the Director for Apprentice Pilots. The Coast Guard assumes that mentor Pilots generate these evaluation reports, which summarize the Apprentice Pilot’s training progress twice a year. These reports allow the Director and the associations to make informed decisions on Apprentice Pilot progress to better tailor what training is needed for an Apprentice Pilot to successfully

complete training to become a United States Registered Pilot. Based on information from a U.S. Coast Guard subject matter expert (SME), this industry practice began in 2018. The Coast Guard estimates that it takes 6 hours to generate and submit these reports. The loaded wage of Pilot submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.²⁵ From 2018 to 2022, the Coast Guard received an average of 18 reports annually, which is greater than the 12 reports the Coast Guard expected for 6 Apprentice Pilots, assuming 2 reports submitted annually. Where the Coast Guard initially received more reports

than the number of active Apprentice Pilots, some reports were backdated for mariners who had already completed Apprentice training and had become Pilots. To be conservative, the Coast Guard uses the higher average of 18 to estimate ongoing costs. The Coast Guard estimates the annual cost of requiring individual training plans for Apprentice Pilots over 2023–2032 to be \$7,901.92 (18 submissions × 6 hours × \$73.17).²⁶ For the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$99,875.41, discounted to 7 percent, and \$7,818.45 annualized, as summarized in table 8.

TABLE 8—COST OF SUBMITTING SEMI-ANNUAL PERFORMANCE REPORTS FOR APPRENTICES
[Pre-Guidance; 2022 dollars]

Year	Reports	Total Pre-Guidance hours	Wage of submitter	Pre-Guidance baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2018	20	6	\$73.17	\$8,779.91	\$11,508.67	\$9,881.87
2019	18	6	73.17	7,901.92	9,680.19	8,634.64
2020	22	6	73.17	9,657.90	11,057.33	10,246.07
2021	9	6	73.17	3,950.96	4,227.53	4,069.49
2022	18	6	73.17	7,901.92	7,901.92	7,901.92
2023	18	6	73.17	7,901.92	7,384.97	7,671.77
2024	18	6	73.17	7,901.92	6,901.84	7,448.32
2025	18	6	73.17	7,901.92	6,450.32	7,231.38
2026	18	6	73.17	7,901.92	6,028.34	7,020.75
2027	18	6	73.17	7,901.92	5,633.96	6,816.26
2028	18	6	73.17	7,901.92	5,265.38	6,617.73
2029	18	6	73.17	7,901.92	4,920.92	6,424.98
2030	18	6	73.17	7,901.92	4,598.99	6,237.85
2031	18	6	73.17	7,901.92	4,298.12	6,056.16
2032	18	6	73.17	7,901.92	4,016.93	5,879.77
Total				117,211.79	99,875.41	108,138.95
Annualized					7,818.45	7,813.88

* **Note:** Components may not add to the totals due to rounding.

The Coast Guard estimates that it takes 20 minutes (0.33 hours) for the Director’s office to review these reports, using a loaded wage of \$113.95 for a GS–14 in-government worker.²⁷ Using

the same metric of 18 submissions annually, the Coast Guard estimates the annual cost to Government of reviewing individual training plans for Apprentice Pilots over 2023–2032 to be \$683.67. For

the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$8,641.19, discounted to 7 percent, and \$1,053.61 annualized, as summarized in table 9.

²⁵ The base wage of Captains, Mates, and Pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://>

beta.bls.gov/dataQuery/search. Last accessed August 2023.
²⁶ The 6 hours to submit includes some time assumed for back-and-forth review between the Apprentice Pilot and the approving manager.
²⁷ The loaded wage of \$113.95 (rounded) comes from the base hourly wage of \$68.55 for a GS–14 Step 5 from the DC region multiplied by a load factor of 1.66, per <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary->

tables/pdf/2022/DCB_h.pdf. To calculate the load factor of 1.66, we divide total hourly compensation for workers with master’s degrees as shown in table 3, \$74.80, by the average hourly wage for workers with master’s degrees as shown in table 1, or \$45.00. \$74.80 ÷ \$45.00 = 1.6622. See “Comparing the Compensation of Federal and Private Sector Employees, 2011–2015,” <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf>.

TABLE 9—COST TO GOVERNMENT OF REVIEWING SEMI-ANNUAL PERFORMANCE REPORTS FOR APPRENTICES
[Pre-Guidance; 2022 dollars]

Year	Reports	Total Pre-Guidance hours	Wage of reviewer	Pre-Guidance baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2018	20	0.33	\$113.95	\$759.64	\$995.73	\$854.98
2019	18	0.33	113.95	683.67	837.53	747.07
2020	22	0.33	113.95	835.60	956.68	886.49
2021	9	0.33	113.95	341.84	365.76	352.09
2022	18	0.33	113.95	683.67	683.67	683.67
2023	18	0.33	113.95	683.67	638.95	663.76
2024	18	0.33	113.95	683.67	597.15	644.43
2025	18	0.33	113.95	683.67	558.08	625.66
2026	18	0.33	113.95	683.67	521.57	607.43
2027	18	0.33	113.95	683.67	487.45	589.74
2028	18	0.33	113.95	683.67	455.56	572.56
2029	18	0.33	113.95	683.67	425.76	555.89
2030	18	0.33	113.95	683.67	397.90	539.70
2031	18	0.33	113.95	683.67	371.87	523.98
2032	18	0.33	113.95	683.67	347.54	508.72
Total				10,141.13	8,641.19	9,356.15
Annualized					1,053.61	676.06

* **Note:** Components may not add to the totals due to rounding.

Removing Monthly Availability Reports

This rule removes the requirement in § 401.260 that Pilots and Apprentice Pilots submit monthly availability reports. Often, these availability reports do not communicate meaningful information, because in practice, Pilots are listed as always available if they could be called in. Therefore, the Coast Guard no longer sees a benefit in requiring these reports. Based on information from a Coast Guard SME, these monthly reports have been submitted by industry since the mid-1960's.²⁸ To capture the recent burden these reports have had on industry, the Coast Guard has chosen to use data from 2018–2022. From 2018 to 2022, the Coast Guard received an average of 672

monthly availability reports. Each report takes an estimated 2.5 hours to submit. Given that this practice did not begin in 2018 and is not a cost attributable to guidance, the Coast Guard has zeroed out the hours from 2018 to 2022. If the Coast Guard continued to require these reports, we could expect to receive 650 annually, 1 report for each of the 6 Apprentice Pilots, 56 Pilots, and 3 Temporary Registered Pilots for the 10 months between when the locks are opened and closed (650 reports = (6 + 56 + 3) × 10 months). The loaded wage of Pilot submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.²⁹

Continuing to require these reports would result in an hour burden of 2.5

hours per submission. Entirely removing this regulatory requirement acts as a marginal decrease in burden of 2.5 hours per submission. Since this marginal change in hour burden is based on a change to existing regulatory text, rather than codifying or modifying industry practice stemming from 2018 guidance, our annual Pre-Guidance reduction in hourly burden in 2023–2032 is equal to that of our annual No Baseline hourly burden (2.5 hours). For the Pre-Guidance period of analysis (2018–2032), we estimate the total net cost savings to be \$(835,065.99) discounted to 7 percent and \$(65,370.68) annualized, as summarized in table 10.

TABLE 10—COST OF SUBMITTING MONTHLY AVAILABILITY REPORTS
[Pre-Guidance; 2022 dollars]

Year	Reports	Total Pre-Guidance hours	Wage of submitter	Pre-Guidance baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2018	670	* 0	\$73.17	\$0.00	\$0.00	\$0.00
2019	620	* 0	73.17	0.00	0.00	0.00
2020	720	* 0	73.17	0.00	0.00	0.00
2021	630	* 0	73.17	0.00	0.00	0.00
2022	720	* 0	73.17	0.00	0.00	0.00
2023	650	2.5	73.17	(118,894.61)	(111,116.46)	(115,431.66)

²⁸ § 401.260(c) that deals with monthly availability reports was initially added to the CFR via 31 FR 9065 (July 1, 1966). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1966/7/1/9063-9067.pdf#page=3. For more information on the history of how the requirement was

redesignated and amended through the years, see <https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-B/section-401.260>.

²⁹ The base wage of Captains, Mates, and Pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total

hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

TABLE 10—COST OF SUBMITTING MONTHLY AVAILABILITY REPORTS—Continued
[Pre-Guidance; 2022 dollars]

Year	Reports	Total Pre-Guidance hours	Wage of submitter	Pre-Guidance baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2024	650	2.5	73.17	(118,894.61)	(103,847.16)	(112,069.57)
2025	650	2.5	73.17	(118,894.61)	(97,053.42)	(108,805.41)
2026	650	2.5	73.17	(118,894.61)	(90,704.13)	(105,636.32)
2027	650	2.5	73.17	(118,894.61)	(84,770.21)	(102,559.54)
2028	650	2.5	73.17	(118,894.61)	(79,224.50)	(99,572.36)
2029	650	2.5	73.17	(118,894.61)	(74,041.59)	(96,672.20)
2030	650	2.5	73.17	(118,894.61)	(69,197.75)	(93,856.50)
2031	650	2.5	73.17	(118,894.61)	(64,670.79)	(91,122.82)
2032	650	2.5	73.17	(118,894.61)	(60,439.99)	(88,468.76)
Total				(1,188,946.11)	(835,065.99)	(1,014,195.15)
Annualized					(65,370.68)	(73,283.50)

* **Note:** Components may not add to the totals due to rounding. Cited hours with “*” indicate that this practice did not begin with the onset of guidance in 2018. To avoid inappropriately categorizing this as a new cost attributable to 2018 guidance, the Coast Guard has opted to zero out hours in applicable cases.

Disputes

Under § 401.431(b), the Coast Guard changes “in writing” to “official correspondence” and specifies that the letter expressing the dispute must include the vessel name, date of service, and reference number for the invoice/bill, the exact amount of dispute, regulatory citation for dispute, and the requested resolution. Per a Coast Guard SME, disputes have been submitted since the mid-1960’s in accordance with § 401.431.³⁰ However, the Coast Guard previously received these disputes in varying formats. From 2018 to 2022, the Coast Guard received 6 unique disputes

(some including multiple charges). Note that no unique disputes were submitted from 2019 to 2022. According to a Coast Guard SME, the agency expects one trip charge dispute submission per year starting in 2023. The loaded wage of Pilot submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.³¹

During 2018–2022, each dispute required 30 minutes to submit. However, given that this practice began prior to 2018 and is, therefore, not a cost attributable to guidance, the Coast Guard has zeroed out the hours from 2018 to 2022. With the changes, the

Coast Guard estimates that future submissions will take 1 hour each, an additional 30 minutes per report. Since this marginal change in hour burden is based in a change to existing regulatory text rather than codifying or modifying industry practice stemming from 2018 guidance, our annual Pre-Guidance hourly burden in 2023–2032 is equal to that of our annual No Baseline hourly burden (0.5 hours). For the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$256.94, discounted to 7-percent, and \$20.11 annualized, as summarized in table 11.

TABLE 11—COST OF SUBMITTING TRIP CHARGE DISPUTES
[Pre-Guidance; 2022 dollars]

Year	Submissions	Total Pre-Guidance hours	Wage of submitter	Pre-Guidance baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2018	6	* 0	\$73.17	0.00	0.00	0.00
2019	0	* 0	73.17	0.00	0.00	0.00
2020	0	* 0	73.17	0.00	0.00	0.00
2021	0	* 0	73.17	0.00	0.00	0.00
2022	0	* 0	73.17	0.00	0.00	0.00
2023	1	0.5	73.17	36.58	34.19	35.52
2024	1	0.5	73.17	36.58	31.95	34.48
2025	1	0.5	73.17	36.58	29.86	33.48
2026	1	0.5	73.17	36.58	27.91	32.50
2027	1	0.5	73.17	36.58	26.08	31.56
2028	1	0.5	73.17	36.58	24.38	30.64
2029	1	0.5	73.17	36.58	22.78	29.75
2030	1	0.5	73.17	36.58	21.29	28.88

³⁰ § 401.431 was initially added to the CFR via 29 FR 10467 (July 28, 1964). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7. For more information on the history of how the requirement was redesignated and amended through the years, see <https://www.ecfr.gov/current/>

title-46/chapter-III/part-401/subpart-D/section-401.431.

³¹ The base wage of Captains, Mates, and Pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and

Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

TABLE 11—COST OF SUBMITTING TRIP CHARGE DISPUTES—Continued

[Pre-Guidance; 2022 dollars]

Year	Submissions	Total Pre-Guidance hours	Wage of submitter	Pre-Guidance baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2031	1	0.5	73.17	36.58	19.90	28.04
2032	1	0.5	73.17	36.58	18.60	27.22
Total				365.83	256.94	312.06
Annualized					20.11	22.55

* **Note:** Numbers may not sum due to rounding. Cited hours with “*” emphasize that this practice did not begin with the onset of guidance in 2018. To avoid inappropriately categorizing this as a new cost attributable to 2018 guidance, the Coast Guard has opted to zero out hours in applicable cases.

Submission of Medical Certificates

Medical certificates are already required as part of an application for an MMC under 46 CFR part 10, subpart C, which is an existing requirement to apply to be an Apprentice Pilot as noted in §§ 401.110 and 401.210. The change in text clarifies that the requirement applies to Apprentice Pilots, which was not specified before. This change directly impacts mariners who submit Apprentice Pilot applications to the Director. On average, the Coast Guard receives 15 such applications annually.

According to a Coast Guard SME, this practice began in 2018 through informal program guidance. This guidance was issued following a recommendation from the Great Lakes Pilotage Advisory Committee in 2018.

The medical certificate portion of the application takes approximately 18 minutes to draft and submit, as detailed in the Information Collection Request, OMB Control Number 1625–0040, “Applications for Merchant Mariner Credentials and Medical Certificate.” Given this information collection both

accounts for all medical certificates that have been received and periodically updated, this increase in medical certificates is already accounted for in 1625–0040. Therefore, this is a regulatory cost but not an information collection cost. The loaded wage of submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.³² For the Pre-Guidance period of analysis (2018–2032), we estimate the grand total cost to be \$4,162.92, discounted to 7 percent, and \$325.88 annualized, as summarized in table 12.

TABLE 12—TOTAL COST OF MEDICAL CERTIFICATES FOR APPRENTICE PILOT APPLICATIONS

[Pre-Guidance; 2022 dollars]

Year	Submissions	Total Pre-Guidance hours	Wage of submitter	Pre-Guidance baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2018	17	0.3	\$73.17	\$373.15	\$489.12	\$419.98
2019	15	0.3	73.17	329.25	403.34	359.78
2020	11	0.3	73.17	241.45	276.43	256.15
2021	15	0.3	73.17	329.25	352.29	339.12
2022	15	0.3	73.17	329.25	329.25	329.25
2023	15	0.3	73.17	329.25	307.71	319.66
2024	15	0.3	73.17	329.25	287.58	310.35
2025	15	0.3	73.17	329.25	268.76	301.31
2026	15	0.3	73.17	329.25	251.18	292.53
2027	15	0.3	73.17	329.25	234.75	284.01
2028	15	0.3	73.17	329.25	219.39	275.74
2029	15	0.3	73.17	329.25	205.04	267.71
2030	15	0.3	73.17	329.25	191.62	259.91
2031	15	0.3	73.17	329.25	179.09	252.34
2032	15	0.3	73.17	329.25	167.37	244.99
Total				4,894.80	4,162.92	4,512.82
Annualized					325.88	326.09

* **Note:** Components may not add to the totals due to rounding.

Costs: No Action Baseline

This section outlines regulatory costs relative to the No Action baseline

scenario. The No Action analysis period is 2023–2032. Our No Action baseline differs from the Pre-Guidance baseline

in its exclusion of any costs that are not directly stemming from this rulemaking. In other words, the No Action baseline

³² The base wage of Captains, Mates, and Pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total

hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series

by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

represents the current state of the world that exists solely under pre-existing regulatory text and prior guidance. This results in many items having non-zero costs in our Pre-Guidance baseline that are no-cost items in the No Action baseline. For example, the Coast Guard began receiving individualized training plans as a byproduct of informal guidance in 2018. While this rulemaking codifies this practice through an addition to 46 CFR 401.110, there is no additional regulatory burden that results from said codification. In other words, all applicable costs across 2018–2032 for individualized training plans can be attributed specifically to the 2018 guidance. Therefore, this is a no-cost provision in our No Action baseline.

The following items had non-zero costs in our Pre-Guidance baseline but are no-cost provisions in the No Action Baseline: (1) Individual training plans for Apprentice Pilots (§§ 401.110 and 401.211(g)); (2) Semi-annual Performance Evaluation Report for Apprentice Pilots (§ 401.211(h)); and (3)

Submission of Medical Certificates (§ 402.210(a)). These three line items all began as a byproduct of informal guidance from 2018 and have no alteration in burden stemming from this rulemaking that differs from that guidance. See table 5 (the “No Action Baseline (2023–2032)” column) for more context on each of these items.

The following items have non-zero costs in our No Action Baseline: (1) Removing monthly availability reports (§ 401.260) and (2) Submitting Trip Charge Disputes (§ 401.431(b)). Both items have associated costs or cost savings that stem directly from changes made from this rulemaking and are discussed in detail as follows.

Removing Monthly Availability Reports

This final rule removes the requirement in § 401.260 that Pilots and Apprentice Pilots submit monthly availability reports. Often these availability reports do not communicate meaningful information because, in practice, Pilots are listed as always available if they could be called in. Therefore, the Coast Guard no longer

sees a benefit in requiring these reports. Based on information from a Coast Guard SME, these monthly reports have been submitted by industry since the mid-1960’s.³³ If the Coast Guard continued to require these reports, we could expect to receive 650 annually, one report for each of the 6 Apprentice Pilots, 56 Pilots, and 3 Temporary Registered Pilots for the 10 months between when the locks are opened and closed (650 reports = (6 + 56 + 3) × 10 months).

Continuing to require these reports would result in an hour burden of 2.5 hours per submission. By entirely removing this regulatory requirement through this rulemaking, this acts as a marginal decrease in burden of 2.5 hours per submission. The loaded wage of submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.³⁴ For the No Action period of analysis (2023–2032), we estimate the total net cost savings to be \$(835,065.99) discounted to 7 percent and \$(118,894.61) annualized, as summarized in table 13.

TABLE 13—COST OF SUBMITTING MONTHLY AVAILABILITY REPORTS
(No Action Baseline; 2022 dollars)

Year	Reports	Total No Action baseline hours	Wage of submitter	No Action baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2023	650	2.5	\$73.17	(\$118,894.61)	(\$111,116.46)	(\$115,431.66)
2024	650	2.5	73.17	(118,894.61)	(103,847.16)	(112,069.57)
2025	650	2.5	73.17	(118,894.61)	(97,053.42)	(108,805.41)
2026	650	2.5	73.17	(118,894.61)	(90,704.13)	(105,636.32)
2027	650	2.5	73.17	(118,894.61)	(84,770.21)	(102,559.54)
2028	650	2.5	73.17	(118,894.61)	(79,224.50)	(99,572.36)
2029	650	2.5	73.17	(118,894.61)	(74,041.59)	(96,672.20)
2030	650	2.5	73.17	(118,894.61)	(69,197.75)	(93,856.50)
2031	650	2.5	73.17	(118,894.61)	(64,670.79)	(91,122.82)
2032	650	2.5	73.17	(118,894.61)	(60,439.99)	(88,468.76)
Total				(1,188,946.11)	(835,065.99)	(1,014,195.15)
Annualized					(118,894.61)	(118,894.61)

* **Note:** Components may not add to the totals due to rounding.

Submitting Trip Charge Disputes

Under § 401.431(b), with this final rule, the Coast Guard changes “in writing” to “official correspondence” and specifies that the letter expressing

³³ § 401.260(c) that deals with monthly availability reports was initially added to the CFR via 31 FR 9065 (July 1, 1966). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1966/7/1/9063-9067.pdf#page=3. For more information on the history of how the requirement was redesignated and amended through the years, see <https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-B/section-401.260>.

the dispute must include the vessel name, date of service, and reference number for the invoice/bill, the exact amount of dispute, regulatory citation for dispute, and the requested resolution. Per a Coast Guard SME,

³⁴ The base wage of Captains, Mates, and Pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

disputes have been submitted since the mid-1960’s, in accordance with § 401.431.³⁵ However, the Coast Guard previously received these disputes in varying forms. According to a Coast Guard SME, the agency expects one trip

³⁵ § 401.431(b) was initially added to the CFR via 29 FR 10467 (July 28, 1964). To read the referenced final rule, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7. For more information on the history of how the requirement was redesignated and amended through the years, see <https://www.ecfr.gov/current/title-46/chapter-III/part-401/subpart-D/section-401.431>.

charge dispute submission per year starting in 2023.

With the changes, the Coast Guard estimates that forthcoming submissions will take 1 hour each. This is an increase in 30 minutes when compared

to the Coast Guard's estimate for submission time associated with prior disputes that lack these new changes (30 minutes). The loaded wage of submitters is \$73.17, from a base wage of \$50.09 and a load factor of 1.46.³⁶ For the No

Action period of analysis (2023–2032), we estimate the grand total cost to be \$256.94, discounted to 7 percent, and \$36.58 annualized, as summarized in table 14.

TABLE 14—COST OF SUBMITTING TRIP CHARGE DISPUTES

[No Action; 2022 dollars]

Year	Submissions	Total No Action baseline hours	Wage of submitter	No Action baseline cost	7%	3%
	[A]	[B]	[C]	[D = A × B × C]		
2023	1	0.5	\$73.17	\$36.58	\$34.19	\$35.52
2024	1	0.5	73.17	36.58	31.95	34.48
2025	1	0.5	73.17	36.58	29.86	33.48
2026	1	0.5	73.17	36.58	27.91	32.50
2027	1	0.5	73.17	36.58	26.08	31.56
2028	1	0.5	73.17	36.58	24.38	30.64
2029	1	0.5	73.17	36.58	22.78	29.75
2030	1	0.5	73.17	36.58	21.29	28.88
2031	1	0.5	73.17	36.58	19.90	28.04
2032	1	0.5	73.17	36.58	18.60	27.22
Total				365.83	256.94	312.06
Annualized					36.58	36.58

* **Note:** Components may not add to the totals due to rounding.

Summary of Total Net Costs

To foster transparency, the Coast Guard is summarizing total net costs by each baseline: Pre-Guidance and No

Action. Table 15 accounts for net private costs to industry and the associations for our Pre-Guidance baseline. For the Pre-Guidance period of analysis (2018–2032), we estimate the

net private cost to industry to be (\$720,755.13) discounted to 7 percent, and (\$56,422.19) annualized, as summarized in table 15.

TABLE 15—NET PRIVATE COSTS TO INDUSTRY

[Pre-Guidance; 2022 dollars]

Year	Individual training plans for apprentice pilots	Semi-annual performance evaluation reports for apprentice pilots	Removing monthly availability reports	Disputes	Submission of medical certificates	Total net private costs	7%	3%
	[A]	[B]	[C]	[D]	[E]	[F] = SUM(A:E)		
2018	\$585.33	\$8,779.91	\$0.00	\$0.00	\$373.15	\$9,738.38	\$12,765.03	\$10,960.64
2019	731.66	7,901.92	0.00	0.00	329.25	8,962.82	10,979.85	9,793.92
2020	731.66	9,657.90	0.00	0.00	241.45	10,631.01	12,171.44	11,278.44
2021	439.00	3,950.96	0.00	0.00	329.25	4,719.20	5,049.55	4,860.78
2022	877.99	7,901.92	0.00	0.00	329.25	9,109.16	9,109.16	9,109.16
2023	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(102,569.04)	(106,552.30)
2024	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(95,858.91)	(103,448.84)
2025	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(89,587.77)	(100,435.76)
2026	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(83,726.89)	(97,510.45)
2027	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(78,249.43)	(94,670.34)
2028	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(73,130.31)	(91,912.95)
2029	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(68,346.08)	(89,235.88)
2030	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(63,874.84)	(86,636.77)
2031	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(59,696.11)	(84,113.37)
2032	877.99	7,901.92	(118,894.61)	36.58	329.25	(109,748.87)	(55,790.76)	(81,663.47)
Total						(1,054,328.14)	(720,755.13)	(890,177.21)
Annualized							(56,422.19)	(64,322.24)

* **Note:** Components may not add to the totals due to rounding.

³⁶ The base wage of Captains, Mates, and Pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total

hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series

by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

Table 16 accounts for net costs to Government for our Pre-Guidance baseline. For the Pre-Guidance period of

analysis (2018–2032), we estimate the net cost to Government to be

\$12,540.65, discounted to 7 percent, and \$981.71 annualized.

TABLE 16—NET COSTS TO GOVERNMENT
[Pre-Guidance; 2022 dollars]

Year	Individual training plans for apprentice pilots	Semi-annual performance evaluation reports for apprentice pilots	Total net government cost	7%	3%
	[A]	[B]	[C = A + B]		
2018	\$227.89	\$759.64	\$987.53	\$1,294.45	\$1,111.47
2019	284.86	683.67	968.54	1,186.50	1,058.34
2020	284.86	835.60	1,120.46	1,282.82	1,188.70
2021	170.92	341.84	512.75	548.65	528.14
2022	341.84	683.67	1,025.51	1,025.51	1,025.51
2023	341.84	683.67	1,025.51	958.42	995.64
2024	341.84	683.67	1,025.51	895.72	966.64
2025	341.84	683.67	1,025.51	837.12	938.49
2026	341.84	683.67	1,025.51	782.36	911.15
2027	341.84	683.67	1,025.51	731.17	884.61
2028	341.84	683.67	1,025.51	683.34	858.85
2029	341.84	683.67	1,025.51	638.63	833.83
2030	341.84	683.67	1,025.51	596.85	809.55
2031	341.84	683.67	1,025.51	557.81	785.97
2032	341.84	683.67	1,025.51	521.32	763.07
Total .....	.....	.....	14,869.87	12,540.65	13,659.95
Annualized .....	.....	.....	.....	981.71	987.04

* **Note:** Components may not add to the totals due to rounding.

By aggregating values from table 15 and table 16, the Coast Guard estimates the total net costs associated with our

Pre-Guidance baseline. For the Pre-Guidance period of analysis (2018–2032), we estimate the total net costs to

be (\$708,214.47), discounted to 7 percent, and (\$55,440.48) annualized, as summarized in table 17.

TABLE 17—TOTAL NET COSTS
[Pre-Guidance; 2022 dollars]

Year	Total net private costs	Total net government costs	Total net annual costs	7%	3%
	[A]	[B]	[C = A + B]		
2018	\$9,738.38	\$987.53	\$10,725.91	\$14,059.48	\$12,072.11
2019	8,962.82	968.54	9,931.36	12,166.34	10,852.27
2020	10,631.01	1,120.46	11,751.47	13,454.26	12,467.13
2021	4,719.20	512.75	5,231.96	5,598.19	5,388.91
2022	9,109.16	1,025.51	10,134.66	10,134.66	10,134.66
2023	(109,748.87)	1,025.51	(108,723.36)	(101,610.62)	(105,556.66)
2024	(109,748.87)	1,025.51	(108,723.36)	(94,963.20)	(102,482.20)
2025	(109,748.87)	1,025.51	(108,723.36)	(88,750.65)	(99,497.28)
2026	(109,748.87)	1,025.51	(108,723.36)	(82,944.53)	(96,599.30)
2027	(109,748.87)	1,025.51	(108,723.36)	(77,518.26)	(93,785.73)
2028	(109,748.87)	1,025.51	(108,723.36)	(72,446.97)	(91,054.11)
2029	(109,748.87)	1,025.51	(108,723.36)	(67,707.45)	(88,402.04)
2030	(109,748.87)	1,025.51	(108,723.36)	(63,277.99)	(85,827.23)
2031	(109,748.87)	1,025.51	(108,723.36)	(59,138.31)	(83,327.40)
2032	(109,748.87)	1,025.51	(108,723.36)	(55,269.44)	(80,900.39)
Total .....	.....	.....	(1,039,458.28)	(708,214.47)	(876,517.26)
Annualized .....	.....	.....	.....	(55,440.48)	(83,014.78)

* **Note:** Components may not add to the totals due to rounding.

Now, we repeat this process, but for costs relative to our No Action baseline. Table 18 accounts for net private costs

to industry and the pilot associations relative to our No Action baseline. For the No Action period of analysis (2023–

2032), we estimate the net private cost to industry to be (\$834,809.05), discounted to 7 percent, and

(\$118,858.03) annualized, as summarized in table 18.

TABLE 18—NET PRIVATE COSTS TO INDUSTRY
[No Action; 2022 dollars]

Year	Removing monthly availability reports	Disputes	Net private cost	7%	3%
	[A]	[B]	[C = A + B]		
2023	(\$118,894.61)	\$36.58	(\$118,858.03)	(\$111,082.27)	(\$115,396.14)
2024	(118,894.61)	36.58	(118,858.03)	(103,815.20)	(112,035.09)
2025	(118,894.61)	36.58	(118,858.03)	(97,023.56)	(108,771.93)
2026	(118,894.61)	36.58	(118,858.03)	(90,676.22)	(105,603.82)
2027	(118,894.61)	36.58	(118,858.03)	(84,744.13)	(102,527.98)
2028	(118,894.61)	36.58	(118,858.03)	(79,200.12)	(99,541.73)
2029	(118,894.61)	36.58	(118,858.03)	(74,018.81)	(96,642.45)
2030	(118,894.61)	36.58	(118,858.03)	(69,176.45)	(93,827.62)
2031	(118,894.61)	36.58	(118,858.03)	(64,650.89)	(91,094.78)
2032	(118,894.61)	36.58	(118,858.03)	(60,421.39)	(88,441.54)
Total .....	.....	.....	(1,188,580.28)	(834,809.05)	(1,013,883.09)
Annualized .....	.....	.....	.....	(118,858.03)	(118,858.03)

* **Note:** Components may not add to the totals due to rounding.

Note that there are no costs to Government relative to the No Action baseline, as costs associated with Government review of both individual

training plans and Semi-annual Performance Evaluation Reports stem from 2018 informal guidance. Therefore, for the No Action period of analysis

(2023–2032), we estimate the total net cost to be (\$834,809.05), discounted to 7 percent, and (\$118,858.03) annualized, as summarized in table 19.

TABLE 19—TOTAL NET COSTS
[No Action; 2022 dollars]

Year	Net private costs	Net government costs	Total net annual costs	7%	3%
	[A]	[B]	[C = A+B]		
2023	(\$118,858.03)	\$0.00	(\$118,858.03)	(\$111,082.27)	(\$115,396.14)
2024	(118,858.03)	0.00	(118,858.03)	(103,815.20)	(112,035.09)
2025	(118,858.03)	0.00	(118,858.03)	(97,023.56)	(108,771.93)
2026	(118,858.03)	0.00	(118,858.03)	(90,676.22)	(105,603.82)
2027	(118,858.03)	0.00	(118,858.03)	(84,744.13)	(102,527.98)
2028	(118,858.03)	0.00	(118,858.03)	(79,200.12)	(99,541.73)
2029	(118,858.03)	0.00	(118,858.03)	(74,018.81)	(96,642.45)
2030	(118,858.03)	0.00	(118,858.03)	(69,176.45)	(93,827.62)
2031	(118,858.03)	0.00	(118,858.03)	(64,650.89)	(91,094.78)
2032	(118,858.03)	0.00	(118,858.03)	(60,421.39)	(88,441.54)
Total .....	.....	.....	(1,188,580.28)	(834,809.05)	(1,013,883.09)
Annualized .....	.....	.....	.....	(118,858.03)	(118,858.03)

* **Note:** Components may not add to the totals due to rounding

Table 20 gives a summary of the total net costs by baseline. The figures shown for each baseline are in 2022 dollars and are discounted at 7 percent.

TABLE 20—SUMMARY OF NET COSTS BY BASELINE
[2022 dollars]

	Pre-guidance baseline (2018–2032; discounted 7%)	No action baseline (2023–2032; discounted 7%)
Net Private Costs to Industry	Net Costs to Industry: (\$720,755.13) Annualized Net Costs to Industry: (\$56,422.19)	Net Costs to Industry: (\$834,809.05) Annualized Net Costs to Industry: (\$118,858.03)
Net Costs to Government	Net Costs to Government: \$12,540.65 Annualized Net Costs to Government: \$981.71	Net Costs to Government: \$0.00 Annualized Net Costs to Government: \$0.00
Total Net Costs	Total Net Costs: (\$708,214.47) Annualized Net Costs: (\$55,440.48)	Total Net Costs: (\$834,809.05) Annualized Net Costs: (\$118,858.03)

* **Note:** Components may not add to the totals due to rounding.

Benefits

The Coast Guard also considered the benefits of this final rule relative to both the Pre-Guidance and No Action baselines. The Pre-Guidance baseline refers to the state of the world prior to any 2018 informal guidance. This baseline captures provisions from both the 2018 informal guidance as well as this rulemaking. Therefore, the Pre-Guidance period of analysis is 2018–2032. The No Action baseline refers to a world absent of this rulemaking. When referring to this baseline, we only measure the impact of new provisions stemming directly from this rulemaking, relative to the current state of the world. The No Action baseline period of analysis is 2023–2032. For both baselines, the benefits are solely qualitative.

Benefits: Pre-Guidance Baseline

There are qualitative benefits associated with both the 2018 informal guidance as well as this rulemaking. The overarching benefit is codifying current industry practices to foster transparency between Coast Guard regulations and the U.S. pilot associations. Many changes outlined in this rulemaking are meant to improve understanding by clarifying current CFR text or creating new regulatory text that outlines existing practices. This is especially true of the numerous administrative changes that result in no cost (outlined in table 4). Additionally, this rulemaking codifies and modifies some practices that predate 2018 guidance, to clarify the pilotage terms and practices used by the Coast Guard and U.S. pilot association operations. The Coast Guard outlines the qualitative benefits for items that have associated costs in our Pre-Guidance baseline.

Individual Training Plans

Prior to 2018, associations used the same template plan for the entire district, rather than individualizing plans. Individualized training plans better ensure that Apprentice Pilots are gaining experience in all relevant transit

areas, when compared to the prior template plans. This improves safety for the Pilots, and it supports Pilots during the training program by ensuring that Apprentice Pilots are qualified for Full Registration at the end of their training.

Semi-Annual Performance Evaluation Reports

Requiring the associations to submit Semi-annual Performance Evaluation Reports allows the Coast Guard and the Director's office to better track the progression of the Apprentice Pilot through the training program. The reports show if an Apprentice Pilot is meeting expectations, and if an Apprentice Pilot is ultimately a good fit for the pilotage program. Where an Apprentice Pilot does not meet these two conditions, reports help the Director more quickly determine if further training or dismissal from training is appropriate.

Removing Monthly Availability Reports

Often availability reports do not communicate meaningful information because in practice, Pilots are listed as always available if they need to be called in. Eliminating this requirement will benefit the Pilots and Apprentice Pilots through saved time, as shown in the discounted cost savings of (\$835,065.99) over the 2018–2032 Pre-Guidance time horizon.

Disputes

By changing “in writing” to “official correspondence” in § 401.431(b) for disputes, the Coast Guard provides more flexibility in how a dispute can be formally submitted. The revisions to the regulatory text more explicitly outline that the letter expressing the dispute must include the vessel name, date of service, and reference number for the invoice/bill, the exact amount of dispute, regulatory citation for dispute, and the requested resolution. Outlining these requirements should result in a more standardized, higher-quality submission that expedites the Director's decision on the dispute leading to a

quicker resolution for the submitter of the dispute.

Submission of Medical Certificates

This rulemaking aligns medical and vision requirements for Apprentice Pilots, United States Registered Pilots, and Temporary Registered Pilots with the existing MMC medical certification standards. This change was a recommendation from the Great Lakes Pilotage Advisory Committee in 2018. Therefore, this practice began in 2018. Alignment of these requirements will prevent confusion and avoid delays when submitting and processing an Apprentice Pilot's application.

The Coast Guard recognizes that, per Executive Order 13563,³⁷ agencies are called to quantify anticipated benefits “as accurately as possible” but may discuss benefits qualitatively when determining a numerical metric is not possible. Note that this rulemaking does not inhibit the ability for industry, associations, or the Coast Guard to reap benefits that stem from prior guidance.

Benefits: No Action Baseline

The No Action baseline highlights benefits that stem solely from this rulemaking. Therefore, any benefits that are solely attributed to prior guidance will not be highlighted here. The No Action baseline refers to a world absent this rulemaking. Since many provisions of this final rule codify industry practices that arose from previous guidance, the qualitative benefits of the No Action baseline are very similar to those of the Pre-Guidance baseline.

Removing Monthly Availability Reports

Often, availability reports do not communicate meaningful information, because, in practice, Pilots are listed as always available if they need to be called in. Eliminating this requirement benefits the Pilots and Apprentice Pilots

³⁷ To access Executive Order 13563 (“Improving Regulation and Regulatory Review”), please see <https://www.federalregister.gov/documents/2011/01/21/2011-1385/improving-regulation-and-regulatory-review>.

through saved time, as shown in the discounted cost savings of (\$835,065.99) over the 2023–2032 No Action time horizon.

Disputes

By changing “in writing” to “official correspondence” in § 401.431(b) for disputes, the Coast Guard provides more flexibility in how a dispute can be formally submitted. The revisions to the regulatory text more explicitly outline that the letter expressing the dispute must include the vessel name, date of service, and reference number for the invoice/bill, the exact amount of dispute, regulatory citation for dispute, and the requested resolution. Outlining these requirements should result in a more standardized, higher-quality submission that expedites the Director’s decision on the dispute, leading to a quicker resolution for the submitter of the dispute.

The Coast Guard recognizes that, per Executive Order 13563,³⁸ agencies are called to quantify anticipated benefits “as accurately as possible” but may discuss benefits qualitatively when determining a numerical metric is not possible. Note that this rulemaking does not inhibit the ability for industry, associations, or the Coast Guard to reap benefits that stem from prior guidance.

Alternatives Considered

Alternative 1. The primary alternative to this rulemaking is to take no action and not alter any of the processes for issuing Limited Registration. The Coast Guard rejected this alternative, because it leaves outdated text in the CFR and perpetuates confusion as industry practices continue to evolve past what is detailed in current regulations.

Alternative 2. The second alternative requires Apprentice Pilots to complete a test before receiving their Limited Registration. Currently, tests are only administered when a mariner tests to receive Full Registration, and tests are administered when test administrators are already in the area and can conduct a test for multiple Apprentice Pilots at once. Tests are administered by the Great Lakes Pilotage Office at the nearest Coast Guard Regional Exam Center (REC) to the Apprentice Pilot, usually REC Toledo. The exam is administered individually to each Apprentice Pilot, and the answer sheet is returned to the Great Lakes Pilotage Office for grading.

Adding tests for each Limited Registration requires the Coast Guard to generate a test for each area in which a Limited Registration is requested,

because Limited Registrations are issued for specific geographic areas. The Coast Guard then needs to administer the generated test, requiring travel for both the test administrator and the test taker. The Coast Guard estimates there are an average of 17 requests for Limited Registration annually. Each request requires 1.5 to 4 hours of testing for both the test taker and the test administrator, with an average of 2 hours for each test.³⁹ For both parties, the Coast Guard has decided to use the conservative estimate of 4 hours for the testing burden. In addition, both the test taker and test administrator must travel, which is an average of 2 hours for the test taker and 6 hours for the test administrator.⁴⁰ The Coast Guard estimates an annual cost of \$7,462.92 for test takers, using a loaded wage of \$73.17 for test takers and assuming 4 hours for testing, 2 hours for travel, and 17 tests annually.⁴¹ For test administration, the Coast Guard estimates an annual cost of \$19,370.71, using a loaded wage of \$113.95 for test administrators and assuming 4 hours for testing, 6 hours for travel, and 17 tests annually.⁴²

The Coast Guard rejected this alternative, because it increases the burden upon the Pilots and the pilot associations without a commensurate increase in safety. The Coast Guard believes the documentation currently received from the Pilots and the associations is adequate to determine if an Apprentice Pilot should be granted a Limited Registration.

Alternative 3. The Coast Guard also considered removing the requirement for Apprentice Pilots to submit

³⁹ Phone communication with Marine Transportation Specialist of the Great Lakes Pilotage Division.

⁴⁰ Ibid.

⁴¹ The base wage of Captains, Mates, and Pilots of water vessels is \$50.09 as of May 2022, per <https://www.bls.gov/oes/2022/may/oes535021.htm>. The load factor of 1.46 is obtained by dividing total hourly compensation for Transportation and Material Moving Occupations of \$33.07 by hourly wages (CMU2010000520000D) and salaries of \$22.64 (CMU2020000520000D). Access these series by searching the series number at <https://beta.bls.gov/dataQuery/search>. Last accessed August 2023.

⁴² The loaded wage of \$113.95 (rounded) comes from the base hourly wage of \$68.55 for a GS–14 Step 5 from the DC region multiplied by a load factor of 1.66, per https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf. To calculate the load factor of 1.66, we divide total hourly compensation for workers with master’s degrees as shown in table 3, \$74.80, by the average hourly wage for workers with master’s degrees as shown in table 1, or \$45.00. $\$74.80 \div \$45.00 = 1.6622$. See “Comparing the Compensation of Federal and Private Sector Employees, 2011–2015,” <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf>.

Performance Evaluation Reports semi-annually (for example, once at the end of the year and once mid-year) to obtain a Limited Registration. Instead, the Coast Guard only requires Apprentice Pilots to submit a Performance Evaluation Report annually (that is, only once at the end of the year). The Coast Guard rejected this option, because we do not believe that annual reporting alone allows us to accurately evaluate the performance of an Apprentice Pilot, which could potentially contribute to a decrease in safety. The Coast Guard receives annual evaluations once a year, by January 15th. If an Apprentice Pilot requested a Limited Registration that required evidence of trips completed that were not included in the most recent performance evaluation, then the Coast Guard could not issue the Limited Registration. Using Semi-annual Performance Evaluation Reports allows greater flexibility in issuing Limited Registrations, as the Semi-annual Performance Evaluation Reports are more likely to have relevant and timely information to evaluate qualifications for Limited Registration. The semi-annual evaluations also allow for greater tailoring of training, resulting in safer operations, because performance in a particular area or on a particular route can be evaluated, while there is time to increase focus on that area for the remaining trips to be completed for the season.

Alternative 4. Preferred Alternative

The preferred alternative is the one put forth in this rulemaking. The Coast Guard selected this alternative because it is less costly than the other alternatives, gives the Coast Guard more relevant and timely information to evaluate qualifications for Limited Registration, and updates the CFR to remove outdated references.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 affected population for this final rule includes 51 U.S. Great Lakes Pilots, 9 Apprentice Pilots, and 3 Temporary Registered Pilots, all represented by 3 pilot associations.

The three associations are the St. Lawrence Seaway Pilots Association

³⁸ Ibid.

representing District One, the Lakes Pilot Association representing District Two, and the Western Great Lakes Pilots Association representing District Three. All these associations classify under the North American Industry Classification System (NAICS) Code 81391002 for Business Associations.⁴³ The size standard for Business Associations of \$15 million was current during the development of the 2023 annual ratemaking and utilized in the final rule (88 FR 12226).⁴⁴ Based on revenue figures reported as part of the 2023 annual ratemaking, the three associations have revenue under \$15 million and could be considered small entities. To further analyze the impacts these associations may face, the Coast Guard is parsing this out, based on the two baselines in the regulatory analysis. The figures referenced are discounted using a 7-percent discount rate.

Under the Pre-Guidance baseline, the annualized cost to industry from this rulemaking amounts to \$8,948.49. This is not more than 1-percent of revenue for any of the associations.

Relative to our No Action baseline, the annualized cost to industry from this rulemaking amounts to \$36.58. This is not more than 1-percent of revenue for any of the associations, and it is offset by the annualized cost savings under the same baseline of (\$118,894.61). Therefore, the annualized net cost to industry is (\$118,858.03) for costs relative to the No Action baseline's period of analysis.

Therefore, 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.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

D. Collection of Information

This rule calls for a collection of information under the Paperwork

Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Great Lakes Pilotage Methodology

OMB Control Number: 1625–0086.

Summary of the Collection of Information: The Director requires that pilot associations provide data relating to bridge hours; vessel delay, detention, cancellation, and moorage; Pilot travel; revenues; and Pilot availability. This final rule adds additional collections, which includes the collection of individual training plans and Semi-annual Performance Evaluation Reports, responses by Apprentice Pilots and Temporary Registered Pilots that were previously not detailed, and disputes and dispute appeals on trip charges.

Need for Information: Pursuant to 46 CFR part 404, the Director of the Great Lakes Pilotage is required to set pilotage rates on the Great Lakes. In meeting this requirement, the Director requires that pilot associations provide data relating to bridge hours; vessel delay, detention, cancellation, and moorage; Pilot travel; revenues; and Pilot availability. The new information collected in this rule assists in estimating the number of Pilots that may be available in a season by accurately tracking their progress through training (training plans and performance evaluations).

Use of Information: The Director of Great Lakes Pilotage uses the data stored in the GLPMS and on Form CG–4509 to carry out operational and ratemaking oversight of pilotage activities on the Great Lakes.

Description of the Respondents: The respondents are mariners and Pilots operating on the Great Lakes, and employees of the pilot associations.

Number of Respondents: This final rule increases the number of respondents by 9, comprising 6 Apprentice Pilots and 3 Temporary Registered Pilots.

Frequency of Response: Individualized training plans are submitted annually. Semi-annual Performance Evaluation Reports are submitted twice annually with follow-up as needed. Applicant Trainee

applications are submitted as needed,⁴⁵ with 8 submitted annually on average. Written marine accidents are submitted as necessary,⁴⁶ with 3 submitted annually on average. Disputes and dispute appeals⁴⁷ are submitted as necessary, with 1 anticipated annually per SME guidance.

Burden of Response: Individualized training plans take 2 hours to submit, for an increased annual burden of 12 hours. Semi-annual Performance Evaluation Reports take 6 hours to submit, for an increased annual burden of 108 hours. The additional applications for the Applicant Trainees take 30 minutes each to submit, for an increased annual burden of 4 hours. Written marine accident reports take an hour to submit, for an increased annual burden of 3 hours. Disputes take 1 hour to submit, with an increased annual burden of 3 hours. Dispute appeals take 30 minutes, with an increased annual burden of 1.5 hours.

Estimate of Total Annual Burden: The total increase in burden from this final rule is 138 hours.

As required by 44 U.S.C. 3507(d), we will submit a copy of this rule to OMB for its review of the collection of information.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has not yet completed its review of this collection. Before the Coast Guard may enforce new collection of information requirements introduced

⁴⁵ Applicant Trainees have already been submitting these, but the regulatory text did not reference Applicant Trainees specifically. These submissions predate any guidance issued in 2018 and are not a result of this rulemaking. The clarifying text in this rulemaking (acts to codify a long-standing practice. For these reasons, this line item is only an information collection cost and not a regulatory cost present in the cost model.

⁴⁶ The submission requirement for written marine accident reports found in § 401.260 originated in 31 FR 9065 (July 1, 1966). Therefore, this is a longstanding requirement which was not previously captured in ICR 1625–0086. For this reason, this line item is only an information collection cost and not a regulatory cost present in the cost model. To access 31 FR 9065, see https://archives.federalregister.gov/issue_slice/1966/7/1/9063-9067.pdf. Note the while reports of marine casualties are generally accounted for in ICR 1625–0001 (“Report of Marine Casualty & Chemical Testing of Commercial Vessel Personnel”), a Coast Guard SME confirmed the scope of the marine accident reports provided to the Director differs from those in 1625–0001. To access ICR 1625–0001, see https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202204-1625-009.

⁴⁷ Dispute appeals (found in 401.431(b)) originated in 29 FR 10467 (July 28, 1964). Therefore, this is a longstanding requirement which was not previously captured in ICR 1625–0086. For this reason, this line item is only an information collection cost and not a regulatory cost present in the cost model. To access 31 FR 9065, see https://archives.federalregister.gov/issue_slice/1964/7/28/10461-10468.pdf#page=7.

⁴³ NAICS codes were found using ReferenceUSA for the Lakes Pilot Association and the Lake Carrier's Association. Coast Guard assumes that the code for the joint association is representative of all associations.

⁴⁴ <https://www.federalregister.gov/documents/2023/02/27/2023-03212/great-lakes-pilotage-rates-2023-annual-ratemaking-and-review-of-methodology>.

by this rule, OMB would need to approve the Coast Guard's request to collect that information. We will publish a **Federal Register** notice once OMB takes action on our request.

E. Federalism

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

In 46 U.S.C. 9303, Congress directs the Coast Guard to regulate Great Lakes Pilot applicants' standards of competency, Certificates of Registration, duration of validity of registration, and the conditions for service by United States Registered Pilots, including availability for service. These regulations are issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a "State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes." As a result, States or local governments are expressly prohibited from regulating within this category.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. See *United States v. Locke*, 529 U.S. 89 (2000). Therefore, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

F. Unfunded Mandates

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. Although this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus

standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. 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.

This final rule is categorically excluded under paragraphs A3, L54 and L56 of Appendix A, table 1 of the Department of Homeland Security (DHS) Instruction Manual 023–01–001–01, Rev. 1. Paragraph A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature:

(a) Those of a strictly administrative or procedural nature;

(b) Those that implement, without substantive change, statutory or regulatory requirements;

(c) Those that implement, without substantive change, procedures, manuals, and other guidance documents;

(d) Those that interpret or amend an existing regulation without changing its environmental effect;

(e) Technical guidance on safety and security matters; or

(f) Guidance for the preparation of security plans.

Paragraph L54 pertains to regulations which are editorial or procedural. Paragraph L56 pertains to regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel.

This final rule involves the amendment of certain Great Lakes

Pilotage regulatory requirements to align them with current Coast Guard and U.S. pilot association operations and related pilotage practices. In particular, this final rule adds or amends definitions for pertinent terms in order to clarify the different phases of training and registrations for Pilots who work on the Great Lakes. All of these changes are consistent with the Coast Guard's maritime safety missions.

List of Subjects

46 CFR Part 10

Penalties, Personally identifiable information, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 402

Great Lakes, Navigation (water), Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 10, 401, and 402 as follows:

PART 10—MERCHANT MARINER CREDENTIALS

- 1. The authority citation for part 10 is revised to read as follows:

Authority: 14 U.S.C. 503; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2104, 2110; 46 U.S.C. chapters 71; 73, 75; 46 U.S.C. 7701, 8903, 8904, and 70105; E.O. 10173; DHS Delegation No. 00170.1, Revision No. 01.4.

- 2. Revise and republish § 10.302(b) to read as follows:

§ 10.302 Medical and physical requirements.

* * * * *

(b) Any required test, exam, or demonstration must have been performed, witnessed, or reviewed by a licensed Medical Doctor, licensed Physician Assistant, licensed Nurse Practitioner, or a Designated Medical Examiner. All licensed medical practitioners must hold a valid license issued in the United States.

* * * * *

PART 401—GREAT LAKES PILOTAGE REGULATIONS

- 3. The authority citation for part 401 is revised to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; DHS Delegation No. 00170.1, Revision No. 01.4, paragraph (II)(92)(a), (92)(d), (92)(e), (92)(f).

- 4. Revise § 401.100 to read as follows:

§ 401.100 Purpose.

The purpose of this part is to carry out those provisions of the Great Lakes Pilotage Act of 1960 (74 Stat. 259, 46 U.S.C. 216) relating to the registration of United States Pilots, the formation of pilotage pools by voluntary associations of United States Registered Pilots, and the establishment of rates, charges, and other conditions or terms for services performed by United States Registered Pilots to meet the provisions of the Act.

- 5. Revise § 401.110 to read as follows:

§ 401.110 Definitions.

As used in this chapter:

Act means the Great Lakes Pilotage Act of 1960, as amended (Pub. L. 86–555, 74 Stat. 259–262; 46 U.S.C. 216 through 216i).

Applicant means a person who has submitted a Form CG–4509 to the Director of Great Lakes Pilotage (“Director”), to be considered for placement in an approved U.S. Great Lakes pilot training and qualification program at one of the established pilotage pools.

Applicant Trainee means a person approved by the Director who is participating in an approved U.S. Great Lakes pilot training and qualification program. This individual meets the minimum requirements listed in 46 CFR 401.214 but does not have the necessary service or experience on their MMC in the Great Lakes to qualify as an Apprentice Pilot. The Applicant Trainee is not eligible for a Limited or Temporary Registration.

Apprentice Pilot means a person approved by the Director who is participating in an approved U.S. Great Lakes pilot training and qualification program. This individual meets all the minimum requirements listed in 46 CFR 401.211.

Association means any organization that holds a Certificate of Authorization issued by the Director to operate a pilotage pool on the Great Lakes.

Canadian Registered Pilot means a person, other than a member of the regular complement of a vessel, who holds an appropriate Canadian license issued by an agency of Canada, and is registered by a designated agency of Canada on substantially the same basis as registration under the provisions of Subpart B of this part.

Chemical test means a scientifically recognized test that analyzes an individual's breath, blood, urine, saliva, bodily fluids, or tissues for evidence of dangerous drug or alcohol use.

Commandant means Commandant of the United States Coast Guard, Communications with the Commandant may be sent to the following address:

Attn: Commandant, U.S. Coast Guard Stop 7000, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7000.

Comparable experience means knowledge and previous performance that is similar to the knowledge and technical skills obtained by serving as an officer on vessels of at least 4,000 gross tonnage. Training and experience while participating in a pilot training program of an authorized pilot organization is considered equivalent on a day for day basis to experience as an officer on a vessel. The training program of the authorized pilot organization must, however, include regularly scheduled trips on vessels of at least 4,000 gross tonnage or over in the company of a United States Registered Pilot.

Director means Director, Great Lakes Pilotage. Communications with the Director may be sent to the following address: Director, Great Lakes Pilotage, U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509.

Full Registration is the issuance of a Certificate of Registration, by the Director, to an Apprentice Pilot who meets all the requirements in 46 CFR 401.210 and 401.211 and completes all the requirements in 46 CFR 402.210 and 402.220 and so becomes a United States Registered Pilot.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the St. Lawrence River as far east as Saint Regis, and adjacent port areas.

Gross Tonnage or *GT* means the gross tonnage measurement of the vessel under 46 U.S.C. chapter 143, Convention Measurement.

Individual Training Plan is an outline of specific requirements reviewed and approved by the Director for an Apprentice Pilot, including but not limited to the length of time to complete the training, the minimum number of round trips required, the association's determination of proficiency, the officer endorsement on the MMC, and the Apprentice Pilot's pilotage experience on the Great Lakes. The plan communicates the qualifications and demonstrates skills the mariners must complete to meet the proficiency requirements for which the mariner is training.

Limited Registration is an authorization issued by the Director, upon the request of the respective pilot association, to an Apprentice Pilot to provide pilotage service without direct supervision from a United States Registered Pilot or Temporary

Registered Pilot in a specific area or waterway.

Marine accident is any of the following that occurs while a U.S. Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot is providing pilotage services in U.S. or Canadian waters:

(1) Any allision or collision;
(2) Any grounding;
(3) A loss of main propulsion, primary steering, or any associated component or control system that, due to its duration or other circumstance, significantly impacts the maneuverability of the vessel;

(4) An occurrence, directly related to the provision of pilotage services, involving significant harm to the environment as defined in 46 CFR 4.03–65 (including Canadian waters); or

(5) Any other incident, directly related to the provision of pilotage services, causing property damage in excess of \$75,000 U.S. dollars (including the cost of labor and material to restore the property to its condition before the incident, but excluding the cost of such things as salvage, cleaning, gas-freeing, drydocking, or demurrage).

Merchant Mariner Credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner's document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner's qualification document, certificate of identification, and certificate of service.

Minimum number of round trips is the fewest number of successful round trips an Apprentice Pilot must perform under the direct supervision of a fully registered United States Registered Pilot or Temporary Registered Pilot, according to their individual training plan. 46 CFR 402.220 contains the minimum number of round trips for certain officer endorsements.

Officer endorsement means an annotation on an MMC that allows a mariner to serve in the capacities listed in 46 CFR 10.109.

Person means an individual, Registered Pilot, partnership, corporation, association, voluntary association, authorized pilotage pool, or public or private organization, other than a government agency.

Pilotage pool means an organization holding a Certificate of Authorization issued by the Director to provide pilotage services.

Rate computation definitions to determine Weighting Factors, as used in the chapter:

(1) *Length* means the distance between the forward and after extremities of the ship.

(2) *Breadth* means the maximum breadth to the outside of the shell plating of the ship.

(3) *Depth* means the vertical distance at amidships from the top of the keel plate to the uppermost continuous deck, fore and aft, and which extends to the sides of the ship. The continuity of a deck is not considered to be affected by the existence of tonnage openings, engine spaces, or a step in the deck.

Round trip means providing pilotage service, in both directions, from one change point to another change point, or inbound and outbound in a port designated by an authorized pilotage pool.

Secretary means the Secretary of the department in which the Coast Guard is operating.

Semi-annual Performance Evaluation Report is an assessment performed on an Apprentice Pilot twice a year, by the association, to report the Apprentice Pilot's progress in the approved U.S. Great Lakes pilot training and qualification program at the established pilotage pool.

Temporary Registered Pilot means a person who is issued a Temporary Registration by the Director in accordance with 46 CFR 401.222. A Temporary Registered Pilot holds a valid MMC, meets the requirements of § 401.222, has previously held a Full Registration, has been approved to provide pilotage services by the Director, and has either:

(1) Reached the age of 70 and desires to continue providing pilotage services; or

(2) Retired from pilotage service and desires to provide pilotage services.

United States Registered Pilot or U.S. Registered Pilot means a person, other than a member of the regular complement of a vessel, who holds an MMC with an officer endorsement authorizing navigation on the Great Lakes and suitably endorsed for pilotage on areas and routes specified therein, issued under the authority of the provisions of Title 46 of the United States Code, and who also currently holds a Certificate of Registration ID Card under the provisions of Subpart B of this part.

■ 6. Revise § 401.120 to read as follows:

§ 401.120 Federal reservation of pilotage regulations.

No state, municipal, or other local authority may require the use of Pilots or regulate any aspect of pilotage in any of the waters specified in the Act. Only those persons registered as United

States Registered Pilots or Canadian Registered Pilots as defined in this subpart may render pilotage services on any vessel subject to the Act and the Memorandum of Understanding, Great Lakes Pilotage.

■ 7. Revise § 401.200 to read as follows:

§ 401.200 Application for registration.

An application for registration as a U.S. Registered Pilot must be made on Form CG-4509, which must be submitted via email to: *GreatLakesPilotage@uscg.mil*; or by physical mail to: Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave SE, Stop 7509, Washington, DC 20593–7509. This form may be obtained from the Director.

■ 8. Revise § 401.210 to read as follows:

§ 401.210 Requirements and qualifications for Full Registration.

(a) No person may be fully registered as a United States Registered Pilot unless:

(1) The individual holds an MMC with an officer endorsement as a Master, Mate, or Pilot, issued under the provisions of subpart B of 46 CFR part 11, and has acquired at least 24 months service as a deck officer or comparable experience on vessels or integrated tug and barge, of at least 4,000 gross tonnage, operating on the Great Lakes or oceans. Those applicants qualifying with other than Great Lakes service must have obtained at least 6 months of service as a deck officer or comparable experience on the Great Lakes. Those applicants qualifying with comparable experience must have served a minimum of 12 months as a deck officer under the authority of their MMC.

(2) The individual is a citizen of the United States.

(3) The individual is of good moral character and temperate habits.

(4) The individual is physically competent to perform the duties of a U.S. Registered Pilot and meets the applicable medical requirements and standards prescribed by the Commandant in subpart C of 46 CFR part 10.

(5) The individual has not reached the age of 70.

(6) The individual agrees to be available for service under the terms and conditions as may be approved or prescribed by the Commandant.

(7) The individual has complied with the requirements set forth in § 401.220(b) for Apprentice Pilots.

(8) The individual meets the chemical testing requirements as defined in 46 CFR part 16.

(9) The individual agrees to comply with all applicable provisions of this part and amendments thereto.

(b) Any person registered as a United States Registered Pilot pursuant to the provisions of this part whose application contains false or misleading statements furnished by the applicant in furtherance of their application will be in violation of these regulations and may be proceeded against under § 401.250(a) or § 401.500.

■ 9. Revise § 401.211 to read as follows:

§ 401.211 Requirements for training of Apprentice Pilots and Limited Registration Authorization.

(a) The Director will determine the number of Apprentice Pilots required to be in training by each association authorized to form a pilotage pool in order to assure an adequate number of United States Registered Pilots.

(b) No Apprentice Pilot will be selected for training unless:

(1) The individual meets the requirements and qualifications set forth in paragraphs (a)(1) through (4), (6), (8), and (9) of § 401.210;

(2) The individual must not have reached the age of 60; and

(3) The individual possesses a Radar Observer-Unlimited endorsement on their MMC in accordance with § 11.480.

(c) For purpose of determining whether an applicant meets the experience requirements contained in § 401.210(a)(1), not more than 12 months of “comparable experience” may be used in fulfilling the 24-month experience requirement.

(d) The Director must approve the United States Registered Pilots or Temporary Registered Pilots designated by the authorized pilot organization to provide training to those Pilots in training to be United States Registered Pilots.

(e) Persons desiring to be considered as an Apprentice Pilot must file with the Director a completed Application Form CG-4509 by email to:

GreatLakesPilotage@uscg.mil; or by mail to: Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave SE, Mail Stop 7509, Washington, DC 20593-7509. Upon the request of the Director, the person desiring to be considered as an Apprentice Pilot must submit two full-face passport style photographs, signed on the photo, vertically, as close to the head as possible.

(f) Applicants meeting the minimum requirements of this section who are both selected by the association and approved by the Director will be issued a U.S. Coast Guard Apprentice Pilot Identification Card. Such Card is valid until such time as:

(1) The expiration of a term determined by the Director;

(2) The Apprentice Pilot is registered as a Pilot under § 401.210;

(3) The Apprentice Pilot withdraws from the training program; or

(4) The card is ordered withdrawn by the Director.

(g) The Apprentice Pilot must have a Director-approved individual training plan. The Apprentice Pilot, along with the pilot association, will record all their round trips, as per their individual training plan, and provide this information to the Director for review. Round trips completed as an Apprentice Pilot will count toward Full Registration.

(h) The appropriate pilot association must complete a Semi-annual Performance Evaluation Report on the Apprentice Pilot twice a year, to assess the Apprentice Pilot's progress in the approved U.S. Great Lakes pilot training and qualification program at the established pilotage pool. The evaluation must be submitted to the Director by August 15 and January 15 of each season. The report should provide a recommendation to the Director on whether to keep the Apprentice Pilot in the training program.

(i) The Apprentice Pilot must be enrolled in the association's chemical testing program. The chemical testing program must meet the requirements of 46 CFR part 16. For the purposes of this part, the association is deemed to be the Sponsoring Organization as defined in 46 CFR 16.105.

(j) To facilitate the training of the Apprentice Pilot, the Director may authorize Limited Registration to the Apprentice Pilot, upon the request from the pilot association. The Apprentice Pilot obtains a Limited Registration by completing and recording the requirements set forth in § 401.220(b)(1). Limited Registration periods will not exceed 6 months before the need to request a renewal; the specific period is determined by the Director per 46 CFR 401.110(9). The Apprentice Pilot must maintain a favorable performance evaluation via their Semi-annual Performance Evaluation Reports, and the Director must determine a need for the Pilot. At any time, this authorization may be revoked at the discretion of the Director.

(k) An Apprentice Pilot may be eligible for a Certificate of Registration, after:

(1) The mariner completes a Director-approved U.S. Great Lakes Pilot training and qualification program in one of the Great Lakes' pilot associations;

(2) The appropriate pilot association gives the mariner a positive endorsement;

(3) The mariner passes the Director's exam; and

(4) The Director determines that the association needs an additional Pilot.

■ 10. Add new § 401.214 to read as follows:

§ 401.214 Training requirements for Applicant Trainees.

(a) The Director will determine the number of Applicant Trainees required to be in training by each association authorized to form a pilotage pool in order to assure an adequate number of United States Registered Pilots.

(b) No Applicant Trainee may be selected for training unless:

(1) The individual meets the requirements and qualifications set forth in paragraphs (a)(2) through (4), (6), (8), and (9) of § 401.210;

(2) The individual must not have reached the age of 60; and

(3) The individual possesses a Radar Observer-Unlimited endorsement on their MMC in accordance with § 11.480.

(c) An individual with other than Great Lakes service must obtain at least six (6) months of service as a credentialed officer, or comparable experience, on the Great Lakes with the pilot association in the District waters assigned before they are eligible to become an Apprentice Pilot. Round trips and related activities completed during this training phase will not count towards Full Registration.

(d) The Director must approve the United States Registered Pilots or Temporary Registered Pilots that are designated by the authorized pilot organization to provide training to those Pilots that are in training to be United States Registered Pilots.

(e) Persons desiring to be considered as an Applicant Trainee must file with the Director a completed Application Form CG-4509 via email to:

GreatLakesPilotage@uscg.mil or by mail to: Great Lakes Pilotage Office, 2703 Martin Luther King Jr. Ave SE, Mail Stop 7509, Washington, DC 20593-7509. Upon the request of the Director, the person desiring to be considered as an Applicant Trainee must submit two full-face passport style photographs, signed on the photo, vertically, as close to the head as possible.

(f) Applicants must meet the pre-employment chemical testing requirements as defined in 46 CFR 16.210.

(g) Applicants meeting the minimum requirements of this section who are both selected by the association and approved by the Director will be issued

a U.S. Coast Guard Applicant Trainee Identification Card. Such Card is valid until such time as:

- (1) The expiration of a term determined by the Director;
- (2) The Applicant Trainee is registered as an Apprentice Pilot under § 401.211;
- (3) The Applicant Trainee withdraws from the training program; or
- (4) The card is ordered withdrawn by the Director.

■ 11. Revise § 401.220 to read as follows:

§ 401.220 Registration of Pilots.

(a) The Director must determine the number of Pilots required to be registered in order to assure adequate and efficient pilotage service in the United States waters of the Great Lakes and to provide for equitable participation of United States Registered Pilots with Canadian Registered Pilots in the rendering of pilotage services. The Director determines the number of Pilots needed as follows:

(1) The Director determines the base number of Pilots needed by dividing each area's peak pilotage demand data by its pilot work cycle. The Pilot work cycle standard includes any time that the Director finds to be a necessary and reasonable component of ensuring that a pilotage assignment is carried out safely, efficiently, and reliably for each area. These components may include, but are not limited to—

- (i) Amount of time a Pilot provides pilotage service or is available to a vessel's Master to provide pilotage service;
- (ii) Pilot travel time, measured from the Pilot's base, to and from an assignment's starting and ending points;
- (iii) Assignment delays and detentions;
- (iv) Administrative time for a Pilot who serves as a pilot association's president;
- (v) Rest between assignments, as required by § 401.451;
- (vi) Ten days' recuperative rest per month from April 15 through November 15 each year, provided that lesser rest allowances are approved by the Director at the pilot association's request, if necessary to provide pilotage without interruption through that period; and
- (vii) Pilotage-related training.

(2) Pilotage demand and the base seasonal work standard are based on available and reliable data, as so deemed by the Director, for a multi-year base period. The multi-year period is the 10 most recent past years, and the data source is a system approved under 46 CFR 403.300. Where such data are not available or reliable, the Director

also may use data, from additional past years or other sources, that the Director determines to be available and reliable.

(3) The number of Pilots needed in each district is calculated by totaling the area results by district and rounding them to the nearest whole integer. For supportable circumstances, the Director may make reasonable and necessary adjustments to the rounded result to provide for changes that the Director anticipates will affect the need for Pilots in the district over the period for which base rates are being established.

(b) Registration of Pilots must be made from among those Apprentice Pilots who have:

(1) Completed the minimum number of round trips prescribed by the Director over the waters for which application is made on oceangoing vessels, in company with a United States Registered Pilot or Temporary Registered Pilot, and in accordance with the Apprentice Pilot's approved individual training plan;

(2) Completed the approved course of instruction for Apprentice Pilots prescribed by the association authorized to establish the pilotage pool; and

(3) After completing the requirements in paragraphs (b)(1) and (2) of this section, satisfactorily completed a written examination prescribed by the Director, evidencing their knowledge and understanding of the Great Lakes Pilotage Act of 1960, Great Lakes Pilotage Regulations, Rules and Orders; the Memorandum of Understanding, Great Lakes Pilotage, between the United States and Canada; and other related matters including the working rules and operating procedures of the district, given at such time and place as the Director may designate within the pilotage district of the Apprentice Pilot.

(c) The pilot association authorized to establish a pilotage pool in which an Apprentice Pilot has qualified for registration under paragraph (b) of this section must submit to the Director, in writing, its recommendations together with its reasons for or against the registration of the Apprentice Pilot.

(d) Subject to the provisions of paragraphs (a), (b), and (c) of this section, an Apprentice Pilot found to be qualified under this subpart may be considered fully registered and issued a Certificate of Registration, valid for a term of five (5) years or until the expiration of their Master, Mate, or Pilot endorsement, or until the Pilot reaches age 70, whichever occurs first.

■ 12. Add new § 401.222 to read as follows:

§ 401.222 Temporary Registered Pilots on the Great Lakes.

(a) The Director may, when necessary to ensure safe, efficient, and reliable pilotage service for maritime commerce, issue a Temporary Registration to any person found qualified under this subpart who:

- (1) Holds a valid MMC;
 - (2) Meets the requirements of 46 CFR 401.210 (except paragraph (a)(5));
 - (3) Has previously held a Full Registration;
 - (4) Meets the requirements of 46 CFR part 16; and
 - (5) Either:
 - (i) Has reached the age of 70 and desires to continue providing pilotage services; or
 - (ii) Has retired from pilotage service and desires to provide pilotage services.
- (b) A Temporary Registration is valid for a length of time to be determined by the Director, but not to exceed 1 year from the date of issuance.

■ 13. Revise § 401.230 to read as follows:

§ 401.230 Certificates of Registration.

(a) A Certificate of Registration must describe the areas and routes of the Great Lakes within which the Pilot is authorized to perform pilotage services, and such description must be consistent with the terms of the pilotage authorization in their Master, Mate, or Pilot endorsement issued under the authority of Title 46 of the United States Code.

(b) A Certificate of Registration does not authorize the holder to board any vessel, or to serve as a Pilot of any vessel, without the permission of the owner or Master. A Certificate of Registration must be in the possession of a Pilot at all times when they are in the service of a vessel, and must be displayed upon demand of the owner or Master, any United States Coast Guard officer or inspector, or a representative of the Director.

(c) A Certificate of Registration evidencing registration of the holder is the property of the U.S. Coast Guard, and it may not be pledged, deposited, or surrendered to any person except as authorized by this part. A Certificate of Registration may not be copied or digitally reproduced, or be used to make a facsimile or Photostat. A Certificate which has expired without renewal, or renewal of which has been denied under the provisions of this section, must be surrendered to the Director upon demand.

(d) An application for a replacement of a lost, damaged, or defaced Certificate of Registration must be submitted to the Director, on a Form CG-4509, together

with two full-face passport style photographs, signed on the photo, vertically, as close to the head as possible. A replacement fee of five dollars (\$5) by check or money order, drawn to the order of the U.S. Coast Guard, must accompany any such application. A Certificate issued as a replacement for a lost, damaged, or defaced Certificate will be marked so as to indicate that it is a replacement. Upon receipt of a Certificate issued as a replacement, the damaged or defaced Certificate must be surrendered to the Director.

(e) A Certificate of Registration may be voluntarily surrendered to the Director by a U.S. Registered Pilot at any time such Pilot no longer desires to perform pilotage services; however, in the event such U.S. Registered Pilot has been served with a notice of hearing pursuant to § 401.250, a voluntary surrender of the Certificate of Registration will be at the option of the Director.

■ 14. Revise § 401.240 to read as follows:

§ 401.240 Renewal of Certificates of Registration.

(a) An application for renewal of a Certificate of Registration must be submitted to the Director, on a Form CG-4509, together with two full-face passport style photographs, signed on the photo, vertically, as close to the head as possible, at least 15 days before the expiration date of the existing Certificate. The form for renewal of Certificates of Registration may be obtained from the Director. A renewal fee of five dollars (\$5) by check or money order, drawn to the order of the U.S. Coast Guard, must accompany an application for renewal of registration, which will be refunded if registration is not renewed. Failure of a U.S. Registered Pilot to comply with these requirements or file a complete and sufficient application may constitute cause for denying renewal of the Certificate of Registration.

(b) No Certificate of Registration will be renewed unless the applicant for renewal meets the requirements and qualifications set forth in § 401.210 for issuance of an original Certificate of Registration, excepting that compliance with § 401.210(a)(4) is not required if the examination was satisfactorily passed on a previous application for registration within six (6) months next preceding the date of application for renewal.

(c) If the Director determines that there is good cause for denying renewal of a Certificate of Registration, the applicant must be notified in writing of

such determination and the cause thereof. The applicant may thereupon apply within fifteen (15) days of the receipt of such notice for a hearing in regard to the cause for the denying of a renewal of the Certificate, which hearing must be granted.

(d) In any case in which the applicant has made timely and sufficient application for renewal of their registration, no such registration will expire until such application has been finally determined by the Director unless the public health, interest, or safety requires otherwise.

(e) Upon receipt of a renewal Certificate of Registration, the expired Certificate must be surrendered to the Director.

■ 15. Amend § 401.250 by revising paragraphs (a) and (d) to read as follows:

§ 401.250 Suspension and revocation of Certificates of Registration.

(a) A Certificate of Registration issued pursuant to the provisions of this part may be suspended or revoked upon a determination on the record, after opportunity for a hearing in accordance with the Administrative Procedure Act, as amended (5 U.S.C. 551 through 559), that the Pilot (holder) has violated any provision of this chapter or is no longer eligible for registration.

* * * * *

(d) Every U.S. Registered Pilot must, whenever their MMC officer endorsement is revoked or suspended under the provisions of part 5 of this title, deliver their Certificate of Registration simultaneously with their MMC to the U.S. Coast Guard. If the officer endorsement is suspended, the Certificate of Registration will be held with the suspended officer endorsement and returned to the holder upon expiration of the suspension period.

■ 16. Revise § 401.260 to read as follows:

§ 401.260 Reports.

(a) A marine accident that occurs while a United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot is providing pilotage service to a vessel in United States or Canadian waters of the Great Lakes must be reported in writing by the Pilot to the Director as soon as possible, but not later than 15 days after the accident. The written report must include:

- (1) Name and description of the vessel or vessels involved;
- (2) Description of the accident;
- (3) Type of accident;
- (4) Location;
- (5) Time of occurrence;
- (6) Prevailing weather;

(7) Results of the Pilot's post-casualty drug and alcohol test, if required;

(8) Damage to the vessel or vessels or property; and

(9) Injury to persons or lives lost.

(b) The report in paragraph (a) of this section does not relieve the Pilot or others of responsibility for submitting any report required by other Coast Guard regulations or other government agencies of the United States or Canada.

(c) Every United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, and Temporary Registered Pilot must file with the Director any change of their mailing address, email address, or phone number within 15 days after the change.

■ 17. Amend § 401.300 by revising the section heading, paragraph (a) introductory text, and paragraph (b) to read as follows:

§ 401.300 Authorization for establishment of pilotage pools.

(a) Voluntary associations of United States Registered Pilots will be authorized to establish a pilotage pool or pools in the following areas of the U.S. waters of the Great Lakes designated by the President in Proclamation No. 3385 of December 22, 1960, as amended by Proclamation No. 3855 of June 10, 1968, or in such other areas as the Director may deem necessary to assure adequate and efficient pilotage services for the U.S. waters of the Great Lakes:

* * * * *

(b) The Director must determine the number of pilotage pools that will be authorized for establishment by voluntary associations of United States Registered Pilots in order to assure adequate and efficient pilotage services for the United States waters of the Great Lakes.

■ 18. Amend § 401.310 by revising the heading and introductory text to read as follows:

§ 401.310 Application for establishment of pilotage pools.

An application by a voluntary association for authorization to establish a pilotage pool must be filed on the form to be obtained from the Director. The form must require, among other things, furnishing of the following information:

* * * * *

■ 19. Amend § 401.320 by revising the section heading, introductory text, and paragraphs (d)(1), (5) and (6) to read as follows:

§ 401.320 Requirements and qualifications for authorization to establish pilotage pools.

No voluntary association will be authorized to establish a pilotage pool unless:

* * * *

(d) * * *

(1) Pilotage services will be provided on a first-come, first-serve basis to vessels giving proper notice of arrival time or pilotage service requirements, to the pilotage station, except that Pilots will not be required to board vessels which do not provide safe boarding facilities;

* * * *

(5) It will be subject to such other provisions as may be prescribed by the Director governing the operation of and the costs which may be charged in connection with the pilotage pools;

(6) It will coordinate on a reciprocal basis its pilotage pool operations with similar pilotage pool arrangements established by the Canadian Government and pursuant to the provisions of the United States-Canada Memorandum of Understanding, Great Lakes Pilotage, or any other arrangements established by the United States and Canadian Governments.

■ 20. Revise § 401.330 to read as follows:

§ 401.330 Certificates of Authorization.

(a) Subject to § 401.300(b), an association that is qualified to establish a pilotage pool in a District or area is issued a Certificate of Authorization that is valid until suspended or revoked under the procedures in § 401.335.

(b) A Certificate of Authorization must be in such form as the Director may prescribe, but must describe the area of the Great Lakes in which the pilotage pool will perform pilotage services. A Certificate of Authorization must be posted in the principal place of business of an association in such manner so as to be available for examination by members of the association and the public.

■ 21. Amend § 401.335 by revising paragraphs (c) through (e) to read as follows:

§ 401.335 Suspension or revocation of a Certificate of Authorization.

* * * *

(c) If the Director finds that the violation of a requirement of this part involves public health, interest, or safety, or that the violation is willful, the Director may issue an order to suspend the Certificate of Authorization without giving notice under paragraph (b) of this section. The order must

contain the reasons for the Director's action.

(d) A holder who has its Certificate of Authorization suspended under paragraph (c) of this section will have an opportunity to be heard by notifying the Director in writing.

(e) The Director must reinstate a Certificate of Authorization that has been suspended under paragraph (b) or (c) of this section when the Director determines that the holder is complying with this part.

■ 22. Revise § 401.340 to read as follows:

§ 401.340 Compliance with working rules of pilotage pools.

(a) United States or Canadian Registered Pilots utilizing the facilities and dispatching services of any authorized pilotage pool must comply with its working rules approved under § 402.320, except to the extent inconsistent with the dispatch orders of the Director under § 401.720(b), and with other rules of the pilotage pool that are related to those facilities and services.

(b) The voluntary associations of U.S. Registered Pilots authorized to establish a pilotage pool may require a U.S. Registered Pilot to execute a written authorization for the pilotage pool to bill for services, deduct authorized expenses, and to comply with the working rules and other rules of the pilotage pool relating to such facilities and services. Facilities and services of the pilotage pool may be denied to any U.S. Registered Pilot who fails or refuses to execute such authorizations.

(c) United States Registered Pilots who fail to execute such an authorization will not be considered members of the U.S. pilotage pool, and are not entitled to reciprocal dispatching and related services by United States and Canadian pilotage pools as provided for by the Memorandum of Understanding. A United States Registered Pilot who fails or refuses to avail themselves of the established facilities and services will be considered as not being continuously available for service pursuant to section 4(a) of the Great Lakes Pilotage Act of 1960 (46 U.S.C. 216 through 216i) and their agreement executed on the Application for Registration as a United States Registered Pilot, and may be subject to suspension or revocation proceedings as prescribed by § 401.250.

§ 401.400 [Amended]

■ 23. Amend § 401.400 introductory text by removing the word “shall” and adding, in its place, the word “must”.

■ 24. Amend § 401.420 by revising paragraphs (a) through (c) to read as follows:

§ 401.420 Cancellation, delay, or interruption in rendition of services.

(a) Except as otherwise provided in this section, a vessel can be charged as authorized in § 401.405 of this part for the waters in which the event takes place, if—

(1) A U.S. Pilot is retained on board while a vessel's passage is interrupted;

(2) A U.S. Pilot's departure from the vessel after the end of an assignment is delayed, and the Pilot is detained on board, for the vessel's convenience; or

(3) A vessel's departure or transit is delayed, for the vessel's convenience, beyond the time that a U.S. Pilot is scheduled to report for duty, or reports for duty as ordered, whichever is later.

(b) When an order for a U.S. Pilot's service is cancelled, the vessel can be charged for the Pilot's reasonable travel expenses for travel that occurred to and from the Pilot's base, and the greater of—

(1) Four hours; or

(2) The time of cancellation and the time of the Pilot's scheduled arrival, or the Pilot's reporting for duty as ordered, whichever is later.

(c) Between the dates of May 1 and November 30, a vessel or owner is not liable for charges under paragraphs (a)(1) or (2) of this section, if the Pilot's retention or delayed departure was caused by ice or weather, as determined by the vessel Master.

* * * *

■ 25. Revise § 401.425 to read as follows:

§ 401.425 Provision for additional Pilot.

The Director may require the assignment of two Pilots to a ship upon request of the ship or when the Director deems it necessary for the safe navigation of the ship, because of anticipated long transit, uncommon ship size, adverse weather or sea conditions or other abnormal circumstances. The charge to the ship will be twice the appropriate charge provided for in §§ 401.405, 401.407, 401.410, and 401.420. Each situation will be evaluated on a case-by-case basis. This authorization may occur at the opening and closing of the year, after the locks have opened or closed for a defined time period based upon the availability of the aids to navigation, ice conditions, weather forecasts, and other relevant information.

§ 401.427 [Amended]

■ 26. Amend § 401.427 by removing the word “shall” and adding, in its place, the word “must”.

■ 27. Revise § 401.430 to read as follows:

§ 401.430 Prohibited charges.

No rate or charge may be applied against any vessel, owner, or Master thereof by a United States Registered Pilot that differs from the rates and charges set forth in this part, nor may any rates or charges be made for services performed by a United States Registered Pilot, or for support services directly related to the provision of pilotage that a United States Registered Pilot requires a vessel to utilize, other than those for which a rate is prescribed in this part, without the approval of the Director.

■ 28. Revise § 401.431 to read as follows:

§ 401.431 Disputed charges.

(a) Any rate or charge applied against any vessel, owner, or Master thereof by a Registered Pilot or pilot association that the owner or Master disputes as a charge prohibited by § 401.430 may be appealed to the Director, within 60 business days of the date the pilot association issues the bill, for an advisory opinion as to whether such rate or charge is a prohibited charge.

(b) The appeal must be official correspondence from either the vessel owner, vessel charterer, or an agent or employee empowered to speak on behalf of the owner or charterer. The appeal must be supported by evidence that a reasonable attempt has been made to resolve the matter between the parties and that a bona fide controversy exists. The correspondence must articulate the following:

- (i) Vessel name, date of service, and reference number for the invoice/bill;
- (ii) Exact amount of dispute;
- (iii) Regulatory citation for dispute; and

(iv) Requested resolution.

(c) The pilot association must be furnished with a copy of the appeal and be notified by the owner or charterer that the matter has been appealed for an advisory opinion.

(d) The pilot association must be allowed 20 business days from receiving the notice of appeal in which to provide any data or arguments desired to be submitted in further defense of the disputed charges.

(e) The Director must consider all relevant matters presented and issue an advisory opinion within 30 business days of receiving the pilot association's submission(s) per paragraph (d) of this

section. The advisory opinion must set forth the rates and charges in dispute, a discussion of the facts and relevant information considered, and a statement of opinion.

(f) When the opinion of the Director is that the disputed rates or charges are prohibited by § 401.430, the respondent must refund moneys, adjust invoices, and otherwise conform to the advisory opinion within thirty (30) business days.

(g) Failure or refusal to comply with the advisory opinion within the time allowed may form a basis for a determination that there is a violation of the Great Lakes Pilotage Regulations subject to the provisions of § 401.500.

(h) The pilot association or vessel owner may appeal the advisory opinion to the Director of Marine Transportation Systems (CG-5PW), no later than 10 business days after receiving the advisory opinion, for a final adjudication.

■ 29. Amend § 401.450 by revising the introductory text and paragraphs (b), (i), and (k) to read as follows:

§ 401.450 Pilot change points.

A Registered Pilot's assignment is completed when the vessel to which they are assigned completes its arrival at or, in the case of a through trip, passes any of the following places:

* * * * *

(b) Iroquois Lock, Ogdensburg, NY;

* * * * *

(i) Buoy 33, St. Marys River, Point Iroquois;

* * * * *

(k) Duluth/Superior and Fort William/Port Arthur with respect to assignments originating at Buoy 33.

■ 30. Revise § 401.451 to read as follows:

§ 401.451 Pilot rest periods.

(a) Except as provided in paragraph (b) of this section:

(1) Each United States Registered Pilot upon completing an assignment at a change point designated in § 401.450, and

(2) Each United States Registered Pilot upon completing a series of assignments totaling more than 10 hours with no more than 2 hours rest between assignments, must not perform pilotage services for at least 10 hours.

(b) In the event of an emergency or other compelling circumstances a pilotage pool may assign a United States Registered Pilot for service before their 10-hour rest period required under paragraph (a) of this section is completed. Pilotage pools must advise the Director of each assignment made under this paragraph.

■ 31. Revise the heading of Subpart E to read as follows:

Subpart E—Penalties; Operations without Registered Pilots

■ 32. Revise § 401.500 to read as follows:

§ 401.500 Penalties for violations.

Any person, including a Pilot, Master, owner, or agent, who violates any provision of this part may be liable to the United States for a civil penalty as set forth in 46 U.S.C. 9308.

■ 33. Revise § 401.510 to read as follows:

§ 401.510 Operation without Registered Pilots.

(a) A vessel may be navigated in the United States waters of the Great Lakes without a United States or Canadian Registered Pilot when the vessel or its cargo is in distress or jeopardy.

(b) A vessel may be navigated in the United States waters of the Great Lakes without a United States or Canadian Registered Pilot only when the Director, with the concurrence of the Commander, 9th Coast Guard District, notifies the Master that a United States or Canadian Registered Pilot is not available.

(1) Notification to the Master that a Pilot is not available will be made by the Director, either directly to the vessel or through the appropriate pilotage pool, orally or in writing as the circumstances permit, and must not be deemed given until the notice is actually received by the vessel.

(2) The determination that a Pilot is not available will be made on an individual basis and only when a vessel has given proper notice of its pilotage service requirements to the pilotage pool having dispatching jurisdiction at the time. The vessel has no obligation or responsibility with respect to such notification other than properly informing the pilotage pool of its pilotage requirements. However, the failure or delay by the pilotage pool in processing a pilotage service request, or refusal or delay by the Director in notifying the vessel that a Pilot is not available, does not constitute constructive notice that a Pilot is not available, and the vessel is not relieved by such failure or delay from compliance with the Great Lakes Pilotage Act of 1960.

(3) In the event of an emergency or any other compelling circumstance, the Director may issue, without the specific request for service as provided under paragraph (b)(2) of this section, individual or general notification that a

Pilot or Pilots are not available. Pilotage pools must advise the Director of any condition or circumstance coming to their attention which may warrant such a determination.

■ 34. Revise § 401.615 to read as follows:

§ 401.615 Representation.

(a) The United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot designated “respondent” in a suspension or revocation hearing or “applicant” in a refusal-to-renew-registration hearing, may be represented before the Administrative Law Judge by any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, Territory, Possession, or the District of Columbia, upon filing with the Administrative Law Judge a written declaration that they are currently qualified and are authorized to represent the particular party in whose behalf they act.

(b) Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Administrative Law Judge, Director, Commandant, the Administrator, or other official of the U.S. Coast Guard, their personal appearance or signature constitutes a representation that under the provisions of this subpart and applicable law they are authorized and qualified to represent the particular person in whose behalf they act.

(c) When any United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registered Pilot is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such a Pilot must be given to or by such attorney. If a Pilot is represented by more than one attorney, service by or upon any one of such attorneys is sufficient.

■ 35. Revise § 401.630 to read as follows:

§ 401.630 Appearance, testimony, and cross-examination.

(a) The U.S. Registered Pilot may appear in person or by counsel and may testify at the hearing, call witnesses on their own behalf, and cross-examine witnesses appearing on behalf of the Director.

(1) In any case in which the U.S. Registered Pilot, after being duly served with the notice of the time and place of the hearing, fails to appear at the time and place specified for the hearing, a notation to that effect must be made in

the record and the hearing may then be conducted “in absentia.”

(2) The Administrative Law Judge must also cause to be placed in the record all the facts concerning the issuance and service of the notice of hearing and the allegations against the U.S. Registered Pilot.

(b) The Director, through counsel, must appear, present evidence, call witnesses, and cross-examine the witnesses called on behalf of the U.S. Registered Pilot.

(c) At the discretion of the Administrative Law Judge, other witnesses may testify at the hearing.

■ 36. Revise § 401.635 to read as follows:

§ 401.635 Evidence which must be excluded.

The Administrative Law Judge presiding at the hearing must exclude irrelevant, immaterial, or unduly repetitious evidence.

■ 37. Revise § 401.640 to read as follows:

§ 401.640 Record for decision.

The transcript of testimony and oral argument at the hearing, together with any exhibits received, will be made part of the record for decision, and the record will be available to the respondent or applicant on payment of costs thereof.

■ 38. Revise § 401.645 to read as follows:

§ 401.645 Administrative Law Judge’s decision; exceptions thereto.

At the conclusion of the hearing, the parties may submit briefs and recommended conclusions and findings within such time as the Administrative Law Judge determines appropriate. The Administrative Law Judge will thereafter issue a written initial decision in the case, which decision will be final and binding upon the Director, except as provided in § 401.650.

■ 39. Revise § 401.650 to read as follows:

§ 401.650 Review of Administrative Law Judge’s initial decision.

(a) The Commandant may, on their own motion, or on the basis of a petition filed by the United States Registered Pilot, Apprentice Pilot, Apprentice Pilot with Limited Registration, or Temporary Registration Pilot in the proceedings of the Commandant, review any initial decision of the Administrative Law Judge by entering a written order stating that they elect to review the action of the Administrative Law Judge. Copies of all orders for review, replies, and decisions must be served on all parties.

(b) A petition for review must be in writing and must state the grounds upon which the petition relies. A petition for review must be limited to the record before the Administrative Law Judge. A hard copy or electronic version of such a petition for review, together with proof of service on all parties, must be filed with the Commandant (CL) within fifteen (15) days after the date of service of the initial decision of the Administrative Law Judge. Parties may file replies, in writing, to a petition for review, with proof of service on other parties in the same manner and number of copies as is provided for filing of a petition for review and within ten (10) days after the date the petition for review is timely filed. A reply must be limited to the record before the Administrative Law Judge and the petition for review.

(c) The initial decision of an Administrative Law Judge will be made final;

(1) Fifteen (15) days after the timely filing of a petition to review unless a reply is filed thereto, or the Commandant enters a written order granting the petition for review; or

(2) Twenty (20) days after the date of service of the Administrative Law Judge’s decision if no petition for review is filed and the Commandant does not elect to review on his or her own motion.

(d) If the Commandant reviews the initial decision as provided in this section, they must issue a written order affirming, amending, overruling, or remanding the initial decision of the Administrative Law Judge within thirty (30) days after the date on which they take review. There is no other administrative remedy within the Department of Homeland Security.

(e) When the Commandant has sustained an order of suspension or revocation of a registration, the respondent may appeal to the National Transportation Safety Board under 49 CFR 825.5 within ten (10) days after service of the Commandant decision.

■ 40. Revise § 401.700 to read as follows:

§ 401.700 Operating requirements for United States Registered Pilots.

Each United States Registered Pilot must—

(a) Provide pilotage service when dispatched by their pilotage pool; and

(b) Comply with the dispatching orders of the Director under § 401.720 (b).

■ 41. Amend § 401.710 by revising the introductory text and paragraphs (a) through (c) to read as follows:

§ 401.710 Operating requirements for holders of Certificates of Authorization.

Each holder of a Certificate of Authorization must—

(a) Comply with the terms of any agreement for services by United States Registered Pilots on the Great Lakes between an appropriate agency of Canada and the Secretary, their designated agent, or the Director;

(b) Coordinate on a reciprocal basis its pilotage pool operations with pilotage pool operations of the Canadian Government, under the “Memorandum of Understanding, Great Lakes Pilotage, Between The United States Coast Guard and The Great Lakes Pilotage Authority,” effective September 19, 2013;

(c) Provide continuous arrangements and facilities for the efficient dispatching of pilotage service on a first-come, first-serve basis to vessels that give notice of pilotage service requirements to the pilotage dispatch station, except Pilots are not required to board a vessel that does not furnish safe boarding facilities;

* * * * *

PART 402—GREAT LAKES PILOTAGE RULES AND ORDERS

■ 42. The authority citation for part 402 is revised to read as follows:

Authority: 46 U.S.C. 2104(a), 8105, 9303, 9304; DHS Delegation No. 00170.1, Revision No. 01.4.

■ 43. Revise § 402.210 to read as follows:

§ 402.210 Requirements and qualifications for registration.

Pursuant to § 401.210(a)(4), each applicant for an original registration at the time of application and each Applicant Trainee, Apprentice Pilot, United States Registered Pilot, and Temporary Registered Pilot is required to pass a physical examination in accordance with subpart C of 46 CFR part 10.

■ 44. Revise § 402.220 to read as follows:

§ 402.220 Registration of Pilots.

(a) Each Apprentice Pilot must complete the minimum number of

round trips specified in this section prior to registration as a United States Registered Pilot. The round trips must be made in company with a United States Registered Pilot or Temporary Registered Pilot, on oceangoing vessels that have a gross tonnage of at least 4,000. The pilot association training committee, pilot association president, or Director may require additional round trips to demonstrate proficiency for a given waterway or specific port in order to ensure maritime safety. The minimum number of round trips listed here is not intended to guarantee completion of a training plan or advancement towards Full Registration.

(1) If the Apprentice Pilot holds a Master endorsement, a minimum of five round trips are required over the waters for which registration is desired.

(2) If the Apprentice Pilot holds a Chief Mate endorsement or a Second Mate endorsement, or holds a First-Class Pilot endorsement with service in the capacity of First Mate or Second Mate, a minimum of eight round trips are required over the waters for which registration is desired.

(3) If the Apprentice Pilot holds a First-Class Pilot endorsement or a Third Mate endorsement, a minimum of twelve round trips are required over the waters for which registration is desired.

(b) No course of instruction prescribed by a pilot association will be approved unless it includes the following minimum criteria:

(1) Instruction in the maneuvering characteristics of various types of vessels and propulsion machinery, including the characteristics of direct-drive motor, geared-drive motor, turbo-electric, steam turbine and steam reciprocating drives. Study of maneuvering characteristics to include turning radius, times and distances to stop, time to back, etc.

(2) Instruction in the effects of oceangoing vessels in restricted waters.

(3) Instruction in the use of tugs, docking procedures in locks and piers, and transiting bridges.

(4) Instruction in search and rescue and civil defense procedures as issued by the U.S. Coast Guard, Federal, State, and local port authorities.

(5) Instruction in communication, security, and signal procedures applicable to U.S. registered and foreign vessels on the Great Lakes as prescribed by the U.S. Coast Guard, St. Lawrence Seaway Development Corporation, U.S. Corps of Army Engineers, and port authorities.

(6) Instruction in Customs, Immigration, Quarantine, Department of Agriculture, and Coast Guard regulations applicable to U.S. registered and foreign vessels on the Great Lakes.

(7) Instruction in the Great Lakes Pilotage Act of 1960; Great Lakes Pilotage Regulations; Presidential Proclamation of December 22, 1960; and Memorandum of Understanding, Great Lakes Pilotage, Between The United States Coast Guard and The Great Lakes Pilotage Authority, effective September 19, 2013.

(8) Instruction in miscellaneous subjects including man-overboard recovery (*i.e.*, Williamson turn); collision, fire, and explosion procedures; and maneuvering in ice.

■ 45. Revise the heading of Subpart C to read as follows:

Subpart C—Establishment of Pilotage Pools by Voluntary Associations of United States Registered Pilots

■ 46. Revise § 402.320 to read as follows:

§ 402.320 Working rules.

Sections 401.320(d)(2) and (6) of this chapter require that voluntary associations of United States Registered Pilots authorized to establish pilotage pools agree to submit Working Rules for approval of the Director and that they will coordinate their pilotage pool operations with Canada on a reciprocal basis. The approved Working Rules of each pilot district are on file in the office of the Director and may request a copy of the Working Rules by emailing GreatLakesPilotage@uscg.mil.

Dated: August 28, 2024.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2024–19839 Filed 9–16–24; 8:45 am]

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Part VI

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 301

Consistent Basis Reporting Between Estate and Person Acquiring Property
From Decedent; Final Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1 and 301**

[TD 9991]

RIN 1545-BM97

Consistent Basis Reporting Between Estate and Person Acquiring Property From Decedent**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final rule.

SUMMARY: This document contains final regulations that provide guidance on the statutory requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for Federal estate tax purposes. In addition, the final regulations provide guidance on the statutory requirements that executors and other persons provide basis information to the IRS and to the recipients of certain property. The final regulations regarding the statutory consistent basis requirement affect recipients of property acquired from a decedent if the inclusion of the value of the property in the decedent's gross estate increases the Federal estate tax liability. The final regulations regarding the statutory basis reporting requirements affect executors and other persons required to file an estate tax return based on the value of the decedent's gross estate and the amount of decedent's lifetime adjusted taxable gifts, as well as trustees making in-kind distributions of property initially acquired from a decedent that was subject to the statutory basis reporting requirements.

DATES: *Effective date:* These regulations are effective on September 17, 2024.

Applicability dates: For dates of applicability, see §§ 1.1014-1(d), 1.1014-10(f), 1.6035-1(j), and 1.6662-9(c).

FOR FURTHER INFORMATION CONTACT: Concerning section 1014(f), Donna Douglas at 202-317-6859; concerning section 6035, Karen Wozniak at 202-317-6844 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 1014(f) and 6035 of the Internal Revenue Code (Code) relating to the statutory consistent basis requirement and basis reporting requirements, and amendments to the

Procedure and Administration Regulations (26 CFR part 301) under sections 6721 and 6722 of the Code relating to the applicable penalties for failure to comply with the statutory basis reporting requirements.

1. General Statutory Background and Enactment of the 2015 Act

Section 2004 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (2015 Act), Public Law 114-41, 129 Stat. 443, 454 (July 31, 2015), enacted sections 1014(f), 6035, 6662(b)(8), 6662(k), 6724(d)(1)(D), and 6724(d)(2)(II) of the Code to require consistency between a recipient's basis in certain property acquired from a decedent and the value of the property as finally determined for Federal estate tax purposes. Section 1014(f) sets forth the consistent basis requirement, while the procedural rules in sections 6035, 6662, and 6724 set forth the applicable reporting requirements, penalties, and definitions. On March 23, 2018, section 104 of Division U of the Consolidated Appropriations Act, 2018, Public Law 115-141, 132 Stat. 348, 1170, made a technical correction to the definition of the term *inconsistent estate basis* under section 6662(k) of the Code, retroactive to the original date of enactment of the 2015 Act. The technical correction modified the definition to take into account, for purposes of the accuracy-related penalty imposed under section 6662 of the Code, that the basis of property determined under section 1014(f) is only the initial basis of such property. Thus, nothing in section 1014(f) prevents post-death basis adjustments pursuant to other sections of the Code.

2. Existing Regulatory and Administrative Guidance Under Sections 1014(f) & 6035

On March 4, 2016, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (81 FR 11486) a notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations (REG-127923-15). The proposed regulations would provide guidance on the consistent basis requirement under section 1014(f) applicable to recipients of certain property from a decedent and the reporting requirements under section 6035 applicable to executors and other persons required to file an estate tax return. Section 1.6035-2 of the proposed regulations (proposed § 1.6035-2) cross-references temporary regulations under § 1.6035-2T (TD 9757), published in the **Federal Register**

(81 FR 11431) on the same day, which provide transitional relief on the due date for filing the information return required by section 6035 (Information Return) and furnishing the statement(s) required by section 6035 (Statement(s)). Specifically, the temporary regulations extended the due date for filing and furnishing the required Information Return and Statement(s) to March 31, 2016.¹

On March 23, 2016, in response to requests from the public for an additional extension of time for filing and furnishing the required Information Return and Statement(s), the Treasury Department and the IRS issued Notice 2016-27, 2016-15 IRB 576, extending the due date for both to June 30, 2016. On December 2, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 86953) final regulations (TD 9797) confirming the extension until June 30, 2016, to file and furnish the required Information Return and Statement(s).

3. Public Hearing and Comments

On June 27, 2016, the Treasury Department and the IRS held a public hearing on the proposed regulations. In addition to the comments received at the hearing, the Treasury Department and the IRS received approximately thirty written comments on the proposed regulations. The written comments are available for public inspection at <https://www.regulations.gov> or upon request.

After consideration of all of the comments, the Treasury Department and the IRS are adopting the proposed regulations with certain revisions. These revisions substantially reduce the burden on both the IRS and taxpayers and increase administrability of the proposed rules. The revisions include (1) removing the zero basis rule for unreported property; (2) adopting a suggested interpretation of the term *acquiring* for purposes of section 6035(a)(1) and thereby modifying the reporting requirements applicable in the case of property not acquired by a beneficiary before the estate tax return due date; (3) eliminating the subsequent transfer reporting requirement for all beneficiaries other than trustees; and (4) excepting additional types of property interests from the consistent basis requirements and the reporting requirements under section 6035. In addition, a number of requested technical changes have been made to

¹ Prior extensions of the due dates to file and furnish the required Information Return and Statement(s) were set forth in Notice 2015-57, 2015-36 IRB 24, and Notice 2016-19, 2016-09 IRB 362.

the proposed regulations. Besides the changes made in response to comments, non-substantive revisions have been made to clarify the language and improve the organization of the proposed regulations. The public comments and revisions are discussed in the Summary of Comments and Explanation of Revisions section of this preamble.

Summary of Comments and Explanation of Revisions

1. Section 1014(f)—Consistent Basis Requirement

A. Proposed § 1.1014–10(a)(1): Consistent Basis Requirement—In General

Section 1014(f)(1) provides that the basis of certain property acquired from a decedent cannot exceed that property's final value for purposes of the Federal estate tax imposed on the estate of the decedent, or, if the final value has not been determined, the value reported on a required Statement. This statutory rule is referred to as the *consistent basis requirement*. Section 1.1014–10 of the proposed regulations (proposed § 1.1014–10) includes proposed rules that would implement the consistent basis requirement.

Proposed § 1.1014–10(a)(1) provides that a taxpayer's initial basis in certain property acquired from a decedent may not exceed the property's final value for estate tax purposes within the meaning of proposed § 1.1014–10(c). Proposed § 1.1014–10(a)(1) additionally provides that the consistent basis requirement applies whenever the taxpayer reports a taxable event to the IRS with respect to the property and continues to apply until the entire property is sold, exchanged, or otherwise disposed of in one or more transactions that result in the recognition of gain or loss for Federal income tax purposes, regardless of whether the owner on the date of the sale, exchange, or disposition is the same taxpayer who acquired the property from the decedent or as a result of the decedent's death.

The final regulations retain the rule in proposed § 1.1014–10(a)(1) incorporating the consistent basis requirement as it applies if a final value has been determined. However, proposed § 1.1014–10(a)(1) is revised in the final regulations to incorporate the consistent basis requirement as it applies if no final value has been determined (previously addressed in proposed § 1.1014–10(c)(2)). Proposed § 1.1014–10(a)(1) additionally is revised in the final regulations to explain that the property subject to the consistent basis requirement is referred to as

consistent basis property, which now is described in § 1.1014–10(c)(1) of the final regulations.

A commenter inquired whether the judicial doctrine of the duty of consistency continues to apply if the consistent basis requirement applies to property. For a discussion of the judicial doctrine of the duty of consistency, see *Van Alen v. Commissioner*, T.C. Memo, 2013–235 (Oct. 2013) and *Janis v. Commissioner*, 461 F.3d 1080 (9th Cir. 2006). The final regulations do not limit the arguments that may be applicable under case law, including the judicial doctrine of the duty of consistency in appropriate cases.

With regard to the rule describing the duration of the consistent basis requirement in proposed § 1.1014–10(a)(1), several comments were received. Commenters asserted, and the Treasury Department and the IRS agree, that the consistent basis requirement should not continue to apply to property that is sold at a price that is equal to its basis because this sale is a recognition event even though no gain or loss is recognized. Other commenters asserted, and the Treasury Department and the IRS agree, that the consistent basis requirement should not continue to apply to property once that property is included in the gross estate of another decedent. Finally, commenters questioned whether substituted property obtained in an exchange under section 1031 of the Code (that is, a like-kind exchange) is subject to the consistent basis requirement.

Accordingly, the rule in proposed § 1.1014–10(a)(1) describing the duration of the consistent basis requirement, which is moved to § 1.1014–10(a)(3) of the final regulations, is revised to clarify that the consistent basis requirement applies until the entire property is sold, exchanged, or otherwise disposed of in a recognition transaction for income tax purposes (whether or not any amount of gain or loss is actually recognized) or the property becomes includible in another decedent's gross estate. Under this rule, because a like-kind exchange is not a recognition event for income tax purposes, substituted property obtained in such a transaction is subject to the consistent basis requirement until the owner's basis in every portion of the substituted property no longer is related, in whole or in part, to the final value of the property that was acquired from the decedent.

B. Proposed § 1.1014–10(a)(2): Subsequent Basis Adjustments

Proposed § 1.1014–10(a)(2) provides that the final value of consistent basis

property is the taxpayer's initial basis in the property. Proposed § 1.1014–10(a)(2) further confirms that, in computing the taxpayer's basis in property acquired from the decedent or as a result of the decedent's death, the taxpayer's initial basis in that property may be adjusted due to the operation of other Code provisions that govern basis without violating the consistent basis requirement. Proposed § 1.1014–10(a)(2) also gives examples of such adjustments, such as gain recognized by the decedent's estate or trust upon distribution of the property, post-death capital improvements and depreciation, and post-death adjustments to the basis of an interest in a partnership or an S corporation (as defined in section 1361(a)(1) of the Code). Proposed § 1.1014–10(a)(2) states that the existence of recourse or non-recourse debt secured by property at the time of the decedent's death does not affect the property's basis, whether the gross value of the property and the outstanding debt are reported separately on the estate tax return or the net value of the property is reported. Therefore, the proposed regulations state that post-death payments on recourse or non-recourse debt secured by property do not result in an adjustment to the property's basis.

Section 1.1014–10(a)(2) of the final regulations maintains the rule identifying the initial basis of consistent basis property if a final value has been determined, as well as the rule and examples regarding acceptable adjustments to initial basis. However, proposed § 1.1014–10(a)(2) is revised in the final regulations by identifying the initial basis of consistent basis property during the period before the final value of such property is determined and by moving the rule regarding recourse and non-recourse debt secured by property to § 1.1014–10(b)(3)(i) of the final regulations.

The rule regarding recourse and non-recourse debt secured by property is addressed separately in the final regulations in order to address more specifically, in response to comments, the effect of recourse and non-recourse debt on the initial basis of consistent basis property. A commenter requested that the final regulations clarify that, if the decedent's estate includes property subject to non-recourse debt and the executor reports the value of the property on the decedent's estate tax return as the value of the property less the debt (the net value or equity of redemption value), then the final value of the property is nevertheless the gross value of the property undiminished by the debt. The Treasury Department and the IRS adopt this suggestion in

§ 1.1014–10(b)(3)(i) of the final regulations, which provides that the final value or, if applicable, the reported value, of property subject to recourse or non-recourse debt is determined based on the gross value of that property undiminished by debt, regardless of whether the estate tax return reports the net value (equity of redemption value) of the property or separately reports the gross value of the property and claims an estate tax deduction for the outstanding debt.

Another commenter requested that the final regulations clarify whether the existence of recourse or non-recourse debt on partnership property reduces the final value of a partnership interest includible in the decedent's gross estate. The existence of recourse or non-recourse debt on partnership property relates to the value of the partnership and the gross value of a decedent's partnership interest, determinations of which are outside the scope of these final regulations. Accordingly, this request is not adopted. However, the Treasury Department and the IRS note that, with respect to a deceased partner having a loan secured by a partnership interest, the same rule in § 1.1014–10(b)(3)(i) of the final regulations will apply so that the final value of the partnership interest is the gross value of the partnership interest undiminished by the debt, regardless of whether the estate tax return reports the net value (equity of redemption value) of the partnership interest or separately reports the gross value of the partnership interest and claims an estate tax deduction for the outstanding debt.

C. Proposed § 1.1014–10(b)(1): Property Subject to Consistency Requirement—In General

Section 1014(f)(2) provides that the consistent basis requirement applies only to property whose inclusion in the decedent's gross estate increased the estate tax liability. Based on this rule, proposed § 1.1014–10(b)(1) provides that the property subject to the consistent basis requirement is any property includible in the decedent's gross estate under section 2031 of the Code, any property subject to tax under section 2106 of the Code, and any other property the basis of which is determined in whole or in part by reference to the basis of such property (for example, as the result of a like-kind exchange or an involuntary conversion) that generates an estate tax liability in excess of allowable credits, except for the credit for prepayment of estate tax.

This rule is maintained in § 1.1014–10(c)(1)(i) of the final regulations with certain modifications in response to

comments. First, the final regulations, in § 1.1014–10(c)(1)(i)(A), include the preliminary criterion for the applicability of the consistent basis requirement in section 1014(f)(1) that only property to which section 1014(a) applies is consistent basis property. Second, the Treasury Department and the IRS have corrected the final regulations to reflect that section 2103 of the Code, not section 2106, defines the gross estate for purposes of the estate tax on the estate of a nonresident non-citizen. The correction is found in the definition of the term *included property* in § 1.1014–10(d)(4) of the final regulations, which term is referenced in § 1.1014–10(c)(1)(i)(B) of the final regulations. Finally, the Treasury Department and the IRS have corrected the final regulations in §§ 1.1014–10(c)(1)(i)(C) and 1.1014–10(d)(5) to remove the reference to the prepayment of estate tax as a credit, because an estate tax prepayment is not an identified credit but instead is a payment of estate tax.

Commenters inquired whether the allowable credits referenced in proposed § 1.1014–10(b)(1) include credits provided under treaties. One commenter inquired whether, in order to treat the prorated unified credit under section 2102(b)(3) of the Code as an allowable credit, the executor is required to attach a Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, to the nonresident non-citizen decedent's Form 706–NA, *United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States*. In response to these comments, § 1.1014–10(d)(5) of the final regulations defines the term *allowable credits* to include both credits against the estate tax allowable by any section of the Code and credits against the estate tax allowable by any treaty obligation of the United States, provided that the estate qualifies for the credit and complies with all applicable rules for claiming the credit, including filing all necessary forms or statements.

With regard to the applicability date of the consistent basis requirement to property, commenters requested clarification on whether the filing after July 31, 2015, of an estate tax return supplementing an estate tax return filed on or before that date would subject any of the assets in the decedent's gross estate to the consistent basis requirement. Other commenters requested clarification on whether the filing on or before July 31, 2015, of an estate tax return that was due after July 31, 2015, would subject any of the assets in the decedent's gross estate to the

consistent basis requirement. In response to these comments, § 1.1014–10(c)(1)(ii) of the final regulations clarifies that neither the supplementing of an estate tax return after July 31, 2015, nor a due date of an estate tax return after July 31, 2015, causes property to be subject to the consistent basis requirement if an estate tax return was filed on or before July 31, 2015.

D. Proposed § 1.1014–10(b)(2): Exclusions

Proposed § 1.1014–10(b)(2) provides that property that qualifies for an estate tax charitable or marital deduction under section 2055, 2056, or 2056A of the Code does not generate a tax liability under chapter 11 of the Code (chapter 11) and therefore is excluded from the property subject to the consistent basis requirement. Proposed § 1.1014–10(b)(2) further provides that tangible personal property for which an appraisal is not required under § 20.2031–6(b) of the Estate Tax Regulations (26 CFR part 20) is deemed not to generate a tax liability under chapter 11 and therefore also is excluded from the property subject to the consistent basis requirement.

With regard to the exclusion for property qualifying for an estate tax charitable or marital deduction under section 2055, 2056, or 2056A, multiple commenters sought clarification on whether property qualifying for only a partial marital or charitable deduction is subject to the consistent basis requirement. In the case of property qualifying for only a partial marital or charitable deduction, the property increases the estate tax liability to the extent that it does not qualify for a marital or charitable deduction and, therefore, the property is subject to the consistent basis requirement. In such a case, applying the consistent basis requirement only to the partial interest not qualifying for a deduction is impractical and incompatible with the uniform basis rules under § 1.1014–4 of the Income Tax Regulations. Accordingly, § 1.1014–10(c)(2)(xi) of the final regulations identifies only wholly deductible property, under any of sections 2055, 2056, 2056A, 2106(a)(2) and (3), as property not subject to the consistent basis requirement. Partially deductible property (property that qualifies for only a partial marital or charitable deduction) is outside the scope of this rule and, therefore, is consistent basis property subject to the consistent basis requirement. Some examples of property qualifying for only a partial marital or charitable deduction, and, therefore, not excepted from the consistent basis requirement, are: (1) a charitable remainder trust, a charitable

lead trust, or a pooled income fund; (2) a trust subject only to a partial QTIP election under section 2056(b)(7); and (3) property divided between the decedent's surviving spouse and a charity if the sum of the deductions for the two interests given to those recipients is less than the value of the property included in the value of the gross estate.

With regard to the exclusion for tangible personal property, § 1.1014–10(c)(2)(ix) of the final regulations retains as an exception to the consistent basis requirement tangible personal property for which an appraisal is not required under § 20.2031–6(b). However, in response to a comment, these items are described in the final regulations as household and personal effects, rather than as tangible personal property, to conform more closely with § 20.2031–6(b).

Multiple commenters advocated for additional exclusions from the consistent basis requirement either because certain property is not subject to the consistent basis requirement under the plain language of the statute or because certain property, in the commenters' views, should be excepted from the consistent basis requirement by the exercise of regulatory authority. In response, § 1.1014–10(c)(2) of the final regulations provides a list of property that is identified as property excepted from or not subject to the consistent basis requirement. A particular property may be described in more than one item on that list.

One commenter suggested that the final regulations confirm that the consistent basis requirement applies only to property to which section 1014(a)(1) through (3) applies, as only such property has a basis that is adjusted to the property's Federal estate tax value as a result of the decedent's death. Specifically, the commenter requested that the final regulations provide that, if the basis of property is not determined under section 1014(a)(1) through (3), then the property is not subject to the consistent basis requirement. Under such a provision, the commenter concluded that the following property would be excluded from the consistent basis requirement: (1) property subject to a conservation easement resulting from the section 2031(c) election (the subject of section 1014(a)(4)); (2) income in respect of a decedent (IRD) (the subject of section 1014(c)); (3) DISC stock (the subject of section 1014(d)); (4) pre-death gifts of appreciated property (the subject of section 1014(e)); (5) stock in a passive foreign investment company (PFIC) by reason of section 1291(e)(1); and (6)

annuities subject to section 72 (the subject of section 1014(b)(9)(A)). Section 1014(f)(1) applies the consistent basis requirement to all property to which section 1014(a) applies. The Treasury Department and the IRS agree that section 1014(b)(9)(A), (c), and (e) describes property not subject to section 1014(a), and therefore property that does not acquire a new basis based in any way on the Federal estate tax value of that property. Stock of a PFIC subject to section 1296(i) also is property not subject to section 1014(a), but only if the basis of such stock is its adjusted basis in the hands of the decedent immediately before the decedent's death. Accordingly, § 1.1014–10(c)(2)(x) of the final regulations clarifies that such interests are not subject to the consistent basis requirement.

However, the adjustments to the basis of property to be made pursuant to section 1014(a)(4) and (d) and otherwise under section 1291(e)(1), do not make section 1014(a), and therefore section 1014(f), inapplicable to the property described in those sections. In each of these cases, the property's Federal estate tax value is a factor used in determining the property's basis under these sections. Thus, the consistent basis requirement applies to the property described in these sections, even though the basis of the property may differ from the Federal estate tax value of the property.

Several commenters requested confirmation that certain property is not subject to the consistent basis requirement because the value of that property is not included in the decedent's gross estate for Federal estate tax purposes. For instance, a commenter requested confirmation that the consistent basis requirement does not apply to property the basis of which is adjusted in a manner similar to section 1014(a) on the occurrence of a taxable termination that occurs on a person's death pursuant to section 2654(a)(2). Such property generally becomes subject to the generation-skipping transfer tax on the death of a trust beneficiary and, as long as the property is not includible in a person's gross estate for Federal estate tax purposes, it is not property to which section 1014(a) applies. Other commenters requested confirmation that the consistent basis requirement does not apply to a surviving spouse's interest in community property to which section 1014(b)(6) applies because, although this property is deemed to have been acquired from the decedent and thus is subject to section 1014(a), such property is not includible in the decedent's gross estate for estate tax purposes. The

Treasury Department and the IRS agree with the commenters that, in both cases, the property is not subject to the consistent basis requirement because it is not property includible in the gross estate. Accordingly, § 1.1014–10(c)(2)(xii) and (xiii) of the final regulations clarify that such interests are not subject to the consistent basis requirement.

Finally, in addition, § 1.1014–10(c)(2) of the final regulations excepts certain types of property whose basis generally does not differ from the property's face value, such as United States dollars and certain equivalents.

E. Proposed § 1.1014–10(b)(3): Application

Proposed § 1.1014–10(b)(3) provides that, if an estate tax liability is payable after the application of all available credits (other than a credit for a prepayment of estate tax), the consistent basis requirement applies to the entire gross estate (other than property excluded by proposed § 1.1014–10(b)(2)) because all such property contributes to the estate tax liability and therefore is treated as generating an estate tax liability. Proposed § 1.1014–10(b)(3) clarifies that if, after the application of all such available credits, no tax under chapter 11 is payable, the entire gross estate is excluded from the application of the consistency requirement. The final regulations in § 1.1014–10(c)(1)(ii) adopt the substance of this proposed rule with minor language changes.

F. Proposed § 1.1014–10(c)(1): Final Value—Finality of Estate Tax Value

Proposed § 1.1014–10(c)(1) provides that the final value of property reported on an estate tax return is its value as finally determined for purposes of the estate tax. Proposed § 1.1014–10(c)(1) further provides that the finally determined value is (i) the value reported on a return filed with the IRS pursuant to section 6018 of the Code once the period of limitations for assessment of the estate tax has expired without that value having been timely adjusted or contested by the IRS, (ii) if the preceding rule in (i) does not apply, the value determined or specified by the IRS once the periods of limitations for assessment and for claim for refund or credit of the estate tax have expired without that value having been timely contested, (iii) if the preceding rules in (i) and (ii) do not apply, the value determined in an agreement, once that agreement is final and binding on all parties, or (iv) if the preceding rules in (i), (ii), or (iii) do not apply, the value determined by a court, once the court's determination is final.

The rules in proposed § 1.1014–10(c)(1) are adopted in redesignated § 1.1014–10(b)(1) of the final regulations, with certain clarifications and other changes. First, § 1.1014–10(b)(1)(ii) of the final regulations omits the reference to the period of limitations on credit or refund, which makes the rules defining the “final value” of consistent basis property in the final regulations more consistent with the rules defining a final determination for gift tax purposes. This is appropriate because both regulatory definitions are based on similar statutory language. Second, the final regulations in § 1.1014–10(d)(1) add a definition of the term *contested* to clarify that an executor cannot contest the IRS’s determination of value with only a “protective” statement generally contesting the IRS’s determination of value. The challenge must be specific to a particular item of property, rather than a general objection that would provide no meaningful information respecting the value of the property at issue. Thus, the challenge must put at issue the value of property by providing to the IRS a written statement that identifies the specific property, states that the executor does not accept as correct the value determined or specified by the IRS, and provides the executor’s claimed value for the property as determined in accordance with the requirements of section 2031, the regulations thereunder, and other applicable guidance. In cases in which the value of property is contested, the final value will be determined either by agreement between the executor and the IRS, as described in § 1.1014–10(b)(1)(iii) of the final regulations, or by litigation, as described in § 1.1014–10(b)(1)(iv) of the final regulations.

G. Proposed § 1.1014–10(c)(2): No Finality of Estate Tax Value

Proposed § 1.1014–10(c)(2) of the proposed regulations provides that, prior to the determination of the final value of property subject to the consistent basis requirement, the recipient of that property may not claim an initial basis in excess of the value reported on the required Statement. Proposed § 1.1014–10(c)(2) further provides that, if the final value of the property subsequently is determined (under proposed § 1.1014–10(c)(1)) and that value differs from the value reported on the required Statement, then the taxpayer may not rely on the required Statement initially furnished for the value of the property and the taxpayer may have a deficiency and underpayment resulting from this difference. The Treasury Department

and the IRS received several comments on these proposed rules.

One commenter opined that the proposed regulations unfairly hold a beneficiary responsible for not using the final value to determine initial basis if the beneficiary sells property before its final value is determined. The commenter asserted that, in any event, if the final value of property is determined after its sale, any accuracy-related penalty imposed under section 6662 should be waived if the beneficiary acted in good faith. Similarly, commenters requested confirmation that no income tax deficiency would result if the final value of the property is determined after the expiration of the period of limitations on assessment applicable to the beneficiary’s income tax return.

If a beneficiary uses the value reported on the required Statement to calculate gain or loss on the sale of property, the beneficiary is using the value reported on the estate tax return. This may or may not be the final value of the consistent basis property as determined under section 1014(f)(3). Nevertheless, section 1014(f)(1)(A) provides specifically that, in the case of property the final value of which has been determined, the beneficiary’s initial basis is limited to that final value. It would be inconsistent with the language of the statute to fail to provide that an income tax deficiency and underpayment may result if a value exceeding the final value is used to determine initial basis.

Accordingly, the final regulations, in redesignated § 1.1014–10(b)(2), maintain the rules in proposed § 1.1014–10(c)(2), and add several clarifying provisions. Section 1.1014–10(b)(2)(i) of the final regulations clarifies that the reported value is the value reported on the Statement required under § 1.6035–1 or, if supplemented, on the most recent supplement to that Statement. That section further clarifies that the value from any Statement that reports either a value from an estate tax return filed after the expiration of the period of limitations on assessment applicable to that return, or a value for property not reported on the estate tax return, is not a reported value. In effect, before a final value is determined, the value reported on the estate tax return controls. This rule recognizes that section 1014(f)(3) requires an assessment process to determine the final value of property. The IRS cannot assess tax on property reported only on the required Information Return or required Statement(s) because these constitute only information returns and payee statements as defined in section

6724(d)(1)(D) and (d)(2)(II), respectively. Section 1.1014–10(b)(2)(ii) of the final regulations clarifies that an income tax deficiency can result if the final value of property is determined before the expiration of the period of limitations on assessment for an income tax return that reports a taxable event with regard to the property. Section 1.1014–10(b)(2)(ii) of the final regulations also includes a reference to section 6664 and the regulations thereunder for rules relating to waivers of penalties for certain failures due to reasonable cause.

H. Proposed § 1.1014–10(c)(3): After-Discovered or Omitted Property

Proposed § 1.1014–10(c)(3) provides basis rules for property that is discovered after the filing of the estate tax return or otherwise is omitted from the estate tax return. Proposed § 1.1014–10(c)(3)(i)(A) provides that, if the executor reports the after-discovered or omitted (unreported) property on an estate tax return filed before the expiration of the period of limitations on assessment of the estate tax, the final value of the property is determined under proposed § 1.1014–10(c)(1) or (2). Alternatively, proposed § 1.1014–10(c)(3)(i)(B) provides that, if the unreported property is not reported before the period of limitations on assessment expires, the final value of that property is zero. Finally, to address situations in which no estate tax return was filed, proposed § 1.1014–10(c)(3)(ii) provides that the final value of all property includible in the gross estate subject to the consistent basis requirement is zero until the final value is determined under proposed § 1.1014–10(c)(1) or (2). Because the application of proposed § 1.1014–10(c)(3)(i)(B) or § 1.1014–10(c)(3)(ii) results in the beneficiary having an initial basis of zero in unreported property, these proposed provisions are collectively referred to as the *zero basis rule*.

Comments received on the zero basis rule generally fall into two categories: those relating to the statutory interpretation of section 1014(f) and the authority to impose the zero basis rule; and those relating to the practical effects of the zero basis rule. With respect to the former, many commenters contended that section 1014(f), by its terms, applies only to property that is reported on an estate tax return. Therefore, the commenters concluded that the basis of unreported property, as determined under section 1014(a), is not limited by the consistent basis requirement in section 1014(f). Commenters further contended that section 1014(f)(4) limits the regulatory authority of the Treasury Department

and the IRS to providing exceptions to the application of the consistent basis requirement, and that expanding the consistent basis requirement to address unreported property is beyond the scope of this regulatory authority. Some commenters contended that the Code does not support a regulatory interpretation that denies at least a carryover basis for an inherited asset.

Commenters commenting on the practical effects of the zero basis rule contended that the rule is onerous, unduly harsh, and unfair. Commenters noted that a beneficiary receiving unreported property in many cases will not be the executor or other person having the responsibility to report the property and the beneficiary may have no ability to compel the executor to report the property on the return. Yet, under the zero basis rule, the beneficiary receiving unreported property will have an increased tax burden due to the denial of basis, whether determined under section 1014(a) (fair market value on the decedent's date of death) or, in the alternative, a carry-over basis of the decedent's adjusted basis in the property. Commenters noted that unreported property is more likely to arise by inadvertent omission from the estate tax return or as a result of being undiscovered, rather than willful omission. Therefore, except in the case of willful omission by a beneficiary who is the executor or other person responsible to report the property, commenters contended that the zero basis rule is unduly harsh and unfair because it creates a 100 percent taxable gain on the sale of the property by the beneficiary.

The Treasury Department and the IRS do not agree that providing a zero basis rule for unreported property is beyond its regulatory authority for implementing the congressional mandate of section 1014(f). See section 7805(a) and, more specifically, section 1014(f)(3)(B) (referencing the ability of the IRS to specify the value of property not reported on a return required by section 6018). However, the Treasury Department and the IRS recognize that such a rule primarily impacts the recipients of unreported property, who may have had no knowledge of or involvement in the failure to report the property for Federal estate tax purposes, but, nevertheless, have an increased tax burden under the rule.

The Treasury Department and the IRS additionally recognize that, under applicable State law, an executor is personally accountable to discharge its fiduciary duty to seek out and collect every asset and to acquire possession of

the property of the decedent. See 31 a.m. Jur. 2d *Executors and Administrators* § 369 (2018); *Eger v. Eger*, 314 NE2d 394 (Ohio App. 1974); *Matter of Deutsch*, 114 A.D.2d 413, 493 N.Y.S 884 (2d Dep't 1985). Further, the Treasury Department and the IRS recognize that, in the absence of a zero basis rule for unreported property, existing Federal tax enforcement mechanisms under subtitle F of the Code, including criminal liability, serve to deter willful nonreporting of property on the estate tax return. See, e.g., section 6651(a)(3) of the Code for a potential addition to tax; sections 6662(a), (g), and (h), 6663, 6721, and 6722 of the Code for potential accuracy-related, fraud, and other penalties; section 6501(c)(1) and (2), and (e)(2) of the Code for potential exceptions to the general three-year period of limitations on assessment; and sections 7203, 7206, and 7207 of the Code for potential criminal liability and penalties.

In view of these considerations, the final regulations do not include the zero basis rule. Instead, § 1.1014–10(c)(1)(i) of the final regulations clarifies that the consistent basis requirement applies only to *included property*, a term that is defined in § 1.1014–10(d)(4) of the final regulations to refer to property, the value of which is included in the value of the decedent's gross estate, as defined in section 2031 or 2103. Section 1.1014–10(d)(4) of the final regulations explains that this refers to property whose value is reported on an estate tax return or otherwise is included in the total value of the gross estate so that a final value is or will be determined for that property under chapter 11.

Consequently, the basis of property acquired or passed from a decedent that is not reported on an estate tax return and not otherwise included in the gross estate generally is determined under section 1014(a), without regard to the rules of section 1014(f). The rule identifying property subject to the consistent basis requirement in § 1.1014–10(c)(1)(i) of the final regulations, together with the definition of the term *included property* in § 1.1014–10(d)(4) of the final regulations, is sufficient to clarify the scope of the consistent basis requirement, and therefore these final regulations do not include a specific rule on the basis of unreported property.

I. Proposed § 1.1014–10(d): Executor

Proposed § 1.1014–10(d) provides that, for purposes of proposed § 1.1014–10, the term *executor* has the same meaning as in section 2203 of the Code and includes any other person required under section 6018(b) to file a return. In

response to comments or as needed for clarity, proposed § 1.1014–10(d) is expanded in the final regulations to define several additional terms for purposes of § 1.1014–10, including the terms *contested*, *estate tax liability*, *included property*, *allowable credits*, and *United States dollars*.

J. Proposed § 1.1014–10(e): Examples

Proposed § 1.1014–10(e) provides four examples to illustrate the application of proposed § 1.1014–10. In general, the examples illustrate rules applicable to the final value of property, subsequent basis adjustments, and reliance on a required Statement. In particular, one example illustrates the application of the zero basis rule on the final value of unreported property.

Section 1.1014–10(e) is revised in the final regulations by reordering the examples and adding headings to provide clarity. Because the zero basis rule from proposed § 1.1014–10(c)(3) is not included in the final regulations, § 1.1014–10(e) is further revised in the final regulations by removing the example illustrating the zero basis rule. Finally, § 1.1014–10(e) is revised in the final regulations by adding examples to illustrate rules regarding the duration of the consistent basis requirement, the meaning of included property that is subject to the consistent basis requirement, and the treatment of partially deductible property that is subject to the consistent basis requirement.

K. Applicability Date

Proposed § 1.1014–10(f) provides that, upon publication of the Treasury Decision adopting these rules as final in the **Federal Register**, § 1.1014–10(f) of the final regulations will apply to property acquired from a decedent or by reason of the death of a decedent whose estate tax return is filed after July 31, 2015. The final regulations revise the applicability date of § 1.1014–10(f) of the proposed regulation consistent with section 7805(b)(1). Accordingly, § 1.1014–10(f) of the final regulations does not reference the July 31, 2015, effective date of section 1014(f), and provides instead that § 1.1014–10 of the final regulations applies to property described in § 1.1014–10(c)(1) of the final regulations that is acquired from a decedent or by reason of the death of a decedent if the decedent's estate tax return is filed after the date of publication of these final regulations in the **Federal Register**.

L. Comments Requesting New Process for Beneficiary To Challenge Value

Several commenters expressed concern that beneficiaries have no input in the determination of final value even if they believe the estate tax return reports an incorrect or understated value. These commenters posited that binding a beneficiary's initial basis to the final value may deprive the beneficiary of due process. Consequently, they requested a procedure through which a beneficiary may challenge the determination of final value. Some commenters suggested that the procedure allow the beneficiary an opportunity to provide evidence of a different date-of-death value at the time of examination by the IRS of the beneficiary's income tax return (on which a taxable event with respect to the property is reported).

The Treasury Department and the IRS considered and briefly responded to a request to create a new process for challenging the value reported by the executor in part 16 of the Summary of Comments on Notice 2015–57 and Explanation of Provisions section of the preamble of the proposed regulations. In the proposed regulations, the Treasury Department and the IRS declined to create a new Federal process for challenging the value reported by the executor. Administrability and other concerns weigh against creating a new Federal process for challenging the value reported by the executor. Specifically, this would leave the IRS in the same position it held prior to the enactment of section 1014(f). During that time, the IRS was forced to litigate valuation issues with a beneficiary, often years after relevant market information had ceased to be available, and/or after having previously litigated the same valuation issue with the estate. In addition, regarding the suggestion to create a procedure to allow the beneficiary to provide evidence of value at the time of examination by the IRS of the beneficiary's income tax return, such a procedure would be contrary to the statutory rule in section 1014(f)(1) limiting the basis of property within its scope to the property's final value for Federal estate tax purposes or, otherwise, to the value reported on a required Statement.

In response to the commenters' concerns, however, the Treasury Department and the IRS are considering issuing guidance in the future that grants a beneficiary of property subject to the consistent basis requirement the opportunity to provide certain credible evidence of value. Out of administrability concerns, the Treasury

Department and the IRS further anticipate such an opportunity might be available only during some limited period of time and only if the credible evidence of value indicates that the reported value represents a substantial understatement of value.

2. Section 6035—Required Information Return(s) and Statement(s)

Section 1.6035–1 of the proposed regulations (proposed § 1.6035–1) includes proposed rules that would address the statutory basis reporting requirements under section 6035 applicable to executors and other persons required to file an estate tax return. As noted in part 3 of the Background section of this preamble, the Treasury Department and the IRS made amendments to the proposed rules that substantially reduce burden and increase administrability for both taxpayers and the IRS. In particular, the final regulations (1) adopt a suggested interpretation of the term *acquiring* in section 6035(a)(1), thereby modifying the reporting requirements applicable in the case of property not acquired by a beneficiary before the estate tax return due date, (2) eliminate the subsequent transfer reporting requirement for all beneficiaries other than trustees, and (3) except additional types of property interests from the reporting requirements under section 6035. These and other amendments to proposed § 1.6035–1 are laid out in a reorganized final regulation.

A. Overview of Reporting Requirements

The final regulations under section 6035 add an overview paragraph in § 1.6035–1(a) to clarify the relationship between the reporting requirements under section 6035 and the consistent basis requirement applicable to certain beneficiaries under section 1014(f).

B. Applicability of Section 6035 Reporting Requirements

In order to provide greater clarity, the final regulations set forth in separate paragraphs the provisions governing the applicability of the section 6035 reporting requirements and the rule for the identification of the persons included as executors who are subject to them.

i. General Rules Regarding Applicability of Section 6035 Reporting Requirements

Section 1.6035–1(b)(1) sets forth the rule in section 6035(a)(1) and proposed § 1.6035–1(a)(2) that only executors of an estate who are required to file an estate tax return (referred to as a *required estate tax return*) under section 6018 are subject to the reporting

requirements under section 6035. In addition, § 1.6035–1(b)(1) sets forth the rule that the reporting requirements apply only in the case of a required estate tax return that is filed after July 31, 2015, and sets forth the rule in proposed § 1.6035–1(a)(2) that the reporting requirements do not apply if no estate tax return is required to be filed under section 6018 even if the executor files an estate tax return for other purposes, including without limitation to make a generation-skipping transfer tax exemption allocation or election, a portability election, or a protective filing to avoid a penalty if an asset value is later determined to cause a return to be required or otherwise.

Section 1.6035–1(b)(1) of the final regulations also clarifies that whether an estate tax return is a required estate tax return depends on the date of death value of property includible in the decedent's gross estate, the amount of adjusted taxable gifts, and the applicable filing threshold under section 6018(a), so that an election made under section 2032 or 2032A of the Code to determine the value of property includible in the gross estate in accordance with either of those respective provisions is not relevant to the determination of whether a return is a required estate tax return. See section 6018(a) and § 20.6018–1(a).

Some commenters inquired whether the reporting requirements apply in the event estate tax returns are filed before August 1, 2015, if either the due date for the return is after July 31, 2015, or the executor files a supplement to the return after July 31, 2015. Section 1.6035–1(b)(1) of the final regulations provides that the reporting requirements do not apply if a required estate tax return is filed on or before July 31, 2015, even if the due date of the return is after July 31, 2015, or if one or more supplements to that return are filed with the IRS after July 31, 2015.

ii. Executors Subject to the Section 6035 Reporting Requirements

Section 1.6035–1(b)(2) of the final regulations defines the term *executor* consistent with the definition of that term in proposed § 1.6035–1(g)(1), but includes further explanation in response to comments. One commenter noted the possibility that more than one person may be considered an executor for purposes of section 2203(a) and § 20.2203–1 and asked for clarification of the filing requirements in that situation. The commenter posited a scenario in which an executor who is appointed, qualified, and acting on behalf of the estate (an appointed executor) files an estate tax return, but

is unable to make a complete return as to a trust the value of which is includible in the gross estate of the decedent. In that case, the trustee of that trust, upon notice from the IRS, is required to file a return reporting the trust property and the value thereof. See section 6018(b) and § 20.6018-2. In response, the final regulations provide that each person required to file a return is subject to the section 6035 reporting requirements, but only with regard to the property reported or required to be reported on the estate tax return required to be filed by that person. The commenter also suggested clarifying the application of the section 6035 reporting requirements if no executor is appointed but multiple persons are in actual or constructive possession of property of the decedent. Under the final regulations, each person in actual or constructive possession of property of the decedent is an executor and is subject to the section 6035 reporting requirements, but only with regard to the property reported or required to be reported on the estate tax return required to be filed by that executor. Finally, the commenter suggested clarifying the application of the reporting requirements in the case of successor or co-executors. While all co-executors are responsible for the reporting, it is sufficient for only one of the co-executors to file the Information Return and to furnish the Statement(s).

Commenters questioned who is required to comply with the reporting requirements if a qualified revocable trust makes a section 645 election and there is a probate estate. Under section 645, the trustee of a qualified revocable trust and an appointed executor (if any) may elect to treat the trust as part of the estate for income tax purposes. The section 645 election relates only to the income tax liability of a qualified revocable trust. Therefore, the section 645 election, by itself, does not affect whether the trustee of a qualified revocable trust is an executor within the meaning of § 1.6035-1(b)(2). The expanded definition of the term executor in § 1.6035-1(b)(2) of the final regulations adequately clarifies who is subject to the reporting requirements.

C. Required Information Return and Statements

Section 1.6035-1(c) of the final regulations incorporates modifications to the rules applicable to an executor's duty to file the required Information Return (defined in § 1.6035-1(c)(1) of the final regulations) and furnish each required Statement (defined in § 1.6035-1(c)(2) of the final regulations) and the due dates for the satisfaction of

those duties. The modifications reflect the adoption of comments relating to an executor's duty to furnish Statements to beneficiaries who have not acquired property before the due date (or earlier filing date) of the estate tax return.

i. Furnishing Statements to Beneficiaries Reporting Property the Beneficiaries Have Not Yet Acquired

Section 6035(a)(1) requires the executor to furnish Statements to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes. Section 1.6035-1(c)(2) of the final regulations defines *Statement* consistent with proposed § 1.6035-1(g)(3) and requires an executor to furnish a Statement to each beneficiary who acquires certain property. Section 1.6035-1(c)(2) of the final regulations clarifies that the value the executor reports on that Statement is the value of the property as reported on the estate tax return required to be filed with the IRS.

Proposed § 1.6035-1(d)(1), relying on the language of section 6035(a)(3)(A), requires that Statements be provided to all beneficiaries on or before the earlier of the date that is 30 days after the due date of the estate tax return or the date that is 30 days after the date the estate tax return is filed with the IRS. If, by this due date, the executor has not determined what property will be used to satisfy the interest of each beneficiary, proposed § 1.6035-1(c)(3) requires executors to report on the Statement for each beneficiary all of the property that the executor could use to satisfy that beneficiary's interest. Proposed § 1.6035-1(c)(3) further provides that, once the exact distribution has been determined, the executor may, but is not required to, file and furnish a supplemental Information Return and Statement.

The Treasury Department and the IRS received numerous comments objecting to this proposed rule. Commenters noted, and the Treasury Department and the IRS agree, that proposed § 1.6035-1(c)(3) would result in duplicate reporting because a single item of property (or interest in the property) would be reported on the Statement of several beneficiaries, even though some of these beneficiaries will never receive an interest or a partial interest in that property. According to commenters, this duplicate reporting may confuse beneficiaries by leading them to expect to receive all of the property reported on the Statements furnished to them. In addition, commenters have contended that this duplicate reporting is burdensome and may violate a

decedent's or beneficiary's right to privacy, possibly resulting in conflicts and litigation among beneficiaries with competing interests in the estate.

Commenters offered various suggestions for revising the rule for property not acquired before the due date of the required reporting under section 6035. One commenter suggested that, in lieu of the rule requiring an executor to identify specific property the beneficiary may receive from the estate, the final regulations should permit executors to furnish Statements indicating that a beneficiary is to receive either (1) a certain percentage of the estate's property or (2) property valued at a certain dollar amount. Under this suggested alternative, the executor then would be required to file a supplemental Information Return and furnish a supplemental Statement within 30 days after the executor distributes the property to the beneficiary.

Most commenters requested that the IRS extend the time for furnishing Statements to beneficiaries to allow executors more time to distribute property or to determine which property will go to which beneficiary. One commenter suggested that the proper interpretation of the language in section 6035(a)(1) requiring an executor to furnish a Statement "to each person acquiring any interest in property included in the decedent's gross estate for Federal estate tax purposes" is that it does not include beneficiaries until they have received an interest in particular property. The commenter supported this recommendation by pointing out that the meaning of the word "acquiring" in the Code generally means already received. The commenter identified sixty-four other sections of the Code in which the word "acquiring" appears and noted that, in only two of those sections, does "acquiring" refer to an event that has not yet occurred. The commenter also pointed to the description of earlier legislative proposals using identical language in which the descriptions refer to the beneficiary "receiving" the property or the "recipients" of an interest. The commenter reasoned that section 6035(a) requires the reporting of the value (as reported on the estate tax return) to the beneficiary acquiring that property, which assumes that the property has already been identified by having been received by the beneficiary. In addition, the commenter suggested, in effect, that this interpretation of the statutory language would not violate the statute's prohibition of any delay in reporting to a recipient beyond the determination of that value because

reporting triggered by the beneficiary's receipt of the property would still provide the required valuation notice to the recipient as soon as the recipient would have reason to use that information. The commenter also noted that section 6035(b) authorizes the Secretary to prescribe regulations as necessary to carry out section 6035, and stated the commenter's belief that this authority is sufficient to allow the creation of a due date for Statements based on the date property is acquired by a beneficiary.

The commenter suggested two alternatives for the due date for furnishing Statements reporting the value of property that has not been acquired or received by the beneficiary by the due date of the Information Return: 30 days after distribution of the property to the beneficiary or January 31 of the year following the year of distribution of the property to the beneficiary. The commenter acknowledged that the first alternative appears to be consistent with the 30-day concepts found in section 6035(a)(3) (due on or before 30 days after the estate tax return due date or 30 days after the estate tax return is filed, if filed before the due date, and, in the case of an adjustment, 30 days after the adjustment is made), but the potential of multiple due dates during a single year would be burdensome on both taxpayers and the IRS. The commenter suggested that a due date of January 31 of the year following distribution would minimize those burdens while nevertheless ensuring that every beneficiary acquiring property from the decedent would have the information necessary for filing a timely income tax return reporting a sale or other relevant event regarding this property.

One commenter requested that, if the final regulations create a due date for furnishing Statements that is based on the date property is acquired by a beneficiary, then executors nevertheless have the option of furnishing all required Statements with the Information Return. Under this suggestion, if an executor determines that it would be less burdensome, an executor would have the option to furnish a Statement to a beneficiary even if the beneficiary has not yet acquired the property.

The Treasury Department and the IRS are sympathetic to the various concerns raised by the commenters. Many estates subject to the section 6035 reporting requirements are complex and will require a period of time well beyond the estate tax return filing due date to determine the appropriate distributions of property to beneficiaries. In light of

these concerns, the final regulations adopt a suggested interpretation of the term *acquiring* in section 6035(a)(1) that modifies, and reduces the burden of, the reporting requirements applicable in the case of property not acquired by a beneficiary before the estate tax return due date (or earlier filing date). With regard to property the beneficiaries acquire after the estate tax return due date, the Treasury Department and the IRS agree with the commenters that a due date for furnishing Statements to such beneficiaries that is after the acquisition of property would have several benefits. It would eliminate the potential confusion and lack of privacy that could result from giving each beneficiary a Statement showing all of the property that could be used to satisfy their respective bequests. It also would be consistent with the understanding of the Treasury Department and the IRS of the intent of section 6035 to provide accurate, timely, and useful information to beneficiaries and the IRS. After consideration of the comments, the Treasury Department and the IRS conclude that it is appropriate to interpret the term *acquiring* consistent with its most common meaning and consistent with the discretionary authority granted in section 6035(b) to provide a due date, which is after the acquisition of property, for furnishing Statements to beneficiaries who acquire property after the due date (or earlier filing date) of the decedent's estate tax return.

With regard to what the due date for Statements with regard to this property should be, the Treasury Department and the IRS conclude that a due date of January 31 of the year following acquisition by the beneficiary of this property is the most administrable and least burdensome alternative. This alternative is the most administrable and least burdensome because a January 31 due date would allow an executor to file the supplemental Information Return on an annual basis with copies of all Statements furnished to beneficiaries acquiring property in any given year, rather than having to file multiple supplemental Information Returns each year on a Statement-by-Statement basis as each Statement is furnished to a beneficiary within 30 days of acquisition.

Accordingly, § 1.6035-1(c)(3) of the final regulations provides that the due date for furnishing a Statement to a beneficiary who acquired property on or before the due date or earlier filing of the estate tax return is 30 days after the due date or earlier filing of the estate tax return. The due date for furnishing a Statement to a beneficiary who acquires

property at a later date is January 31 of the calendar year following the year of acquisition. Section 1.6035-1(c)(4) of the final regulations provides that a beneficiary acquires property when title vests in the beneficiary or when the beneficiary otherwise has sufficient control over or connection with the property that the beneficiary is able to take action related to the property for which basis is relevant for Federal income tax purposes. Depending upon the particular property and how it was titled at the decedent's death, this could occur at the moment of death, or upon distribution by the executor or a trustee.

The Treasury Department and the IRS further agree that providing executors the option of furnishing all Statements within 30 days of filing the estate tax return, regardless of whether all assets by then have been acquired by the beneficiaries, may reduce the burden associated with these reporting requirements and is reasonable if an executor has cause to believe that a beneficiary will acquire certain property. However, in the event that a different beneficiary acquires that property, requiring supplemental reporting ensures that beneficiaries receive the information they need to satisfy the consistent basis requirement of section 1014(f) and otherwise. Accordingly, § 1.6035-1(c)(5) of the final regulations provides an option to furnish Statement(s) prior to the acquisition of property by a beneficiary. Under this rule, an executor may satisfy the requirement to furnish a Statement to a beneficiary acquiring property from the decedent or by reason of the death of the decedent by furnishing the Statement prior to the beneficiary's acquisition of the property, but only if the executor has reason to believe that the beneficiary in fact will acquire the property. The Statement must identify the property the beneficiary is expected to acquire as well as the value of that property and other information prescribed by the Statement and the instructions. A Statement described in this paragraph also must include information with respect to property that has been acquired by that beneficiary as required under § 1.6035-1(c)(2) of the final regulations. Also, under the rule in § 1.6035-1(c)(5) executors are required to update the beneficiary information on a supplemental Information Return and Statement if, after satisfying the requirements for this optional reporting, the property is acquired by a different beneficiary.

ii. Explanation of Provisions Regarding the Required Information Return and Statement(s)

In light of the due date set forth in the final regulations for the furnishing of Statements with regard to property acquired by a beneficiary after the due date or earlier filing of the estate tax return, § 1.6035–1(c) of the final regulations makes coordinating changes in the description of the Information Return and the due dates of that return and of any required supplements to the Information Return.

In particular, § 1.6035–1(c)(1) of the final regulations defines *Information Return* consistent with proposed § 1.6035–1(g)(2), with one exception, and requires an executor to file the Information Return by the due date set forth in § 1.6035–1(c)(3) of the final regulations. The one change is that the required attachments to the Information Return include only a copy of each Statement reporting the value of property acquired by a beneficiary on or before the due date or earlier filing of the Federal estate tax return, and a copy of each Statement (if any) reporting the value of property that has not by then been acquired by a beneficiary as described in § 1.6035–1(c)(5) of the final regulations (the option to furnish Statement(s) prior to the acquisition of property by a beneficiary). The Information Return must be timely filed even if there are no Statements (as described in the preceding sentence) required to be attached to that return.

As discussed in part 2.C.i. of this Summary of Comments and Explanation of Revisions, a Statement reporting the value of property acquired by a beneficiary subsequent to the due date or earlier filing date of the estate tax return must be furnished to the beneficiary on or before January 31 of the calendar year following the date of that acquisition. Under § 1.6035–1(c)(3)(ii) of the final regulations, a copy of each Statement due by that January 31, along with a copy of each Statement (if any) provided to beneficiaries in advance of their receipt of property as permitted under § 1.6035–1(c)(5) of the final regulations, must be attached to a supplemental Information Return filed with the IRS on or before that same January 31. Section 1.6035–1(c)(3)(iii) of the final regulations confirms the transition rule in proposed § 1.6035–1(d)(2), with an updated reference to § 1.6035–2 of the final regulations. Finally, § 1.6035–1(c)(6) of the final regulations includes an example illustrating the application of § 1.6035–1(c) of the final regulations.

Several commenters requested that a six-month extension of time (distinct from the automatic six-month extension of time for filing the estate tax return) be permitted for filing and furnishing the Information Return and Statements in order to allow the executor sufficient time to accurately determine which assets will be used to satisfy the interests of the various beneficiaries. The due date set forth in the final regulations for furnishing Statements to beneficiaries with regard to property they acquire after the estate tax return due date adequately addresses the concern identified by the commenters. Therefore, this suggestion is not adopted.

D. Duty To Supplement

i. Duty To Supplement and Changes Requiring Supplemental Reporting

Section 1.6035–1(d)(1) of the final regulations sets forth the rules in proposed § 1.6035–1(e)(1) that impose a supplemental reporting obligation (both to the IRS and to the beneficiary) on an executor if a change to the information required to be reported on the Information Return or Statement (or supplement to either) causes the information as reported to be incorrect or incomplete. Several examples of adjustments requiring supplemental reporting are identified in proposed § 1.6035–1(e)(2), and several comments were received with regard to these examples. In response to these comments, some of the examples listed in § 1.6035–1(d)(2) of the final regulations differ from those proposed, and the final regulations clarify some of the other examples of adjustments.

Section 1.6035–1(d)(2)(i) of the final regulations sets forth the rule in proposed § 1.6035–1(e)(2) imposing a duty to supplement upon the executor's receipt, discovery, or acquisition of information that changes the beneficiary to whom the property is to be distributed (pursuant to a death, disclaimer, bankruptcy, or otherwise). However, the rule is clarified in the final regulations to provide more detail in response to comments. Commenters asked how an executor is to comply with the reporting requirements under section 6035 if all of the required beneficiary information is not available to the executor, for instance, if the beneficiary cannot be located or the beneficiary is a trust not as yet established. The final regulations describe the requirements in these circumstances and include the requirement to supplement the required reporting to update the beneficiary information when it becomes available

to an executor. See § 1.6035–1(d) and (g) of the final regulations. Accordingly, § 1.6035–1(d)(2)(i) of the final regulations includes, as a change requiring supplemental reporting, the discovery of any information that corrects or completes other beneficiary information originally reported.

In response to comments, § 1.6035–1(d)(2)(ii) of the final regulations clarifies the rule in proposed § 1.6035–1(e)(2) providing that a change in the value of property pursuant to an examination or litigation is a change requiring supplemental reporting. One commenter asked for clarification as to whether supplemental reporting is required if, during examination or litigation, a settlement with the IRS increases the estate tax liability but the increase is not related to a particular property. Another commenter requested confirmation that only an adjustment in value that represents the final value for Federal estate tax purposes gives rise to a duty to supplement. With respect to the first comment, the Treasury Department and the IRS observe that a settlement of estate tax liability typically is related to an adjustment to the value of particular, identified property includible in the gross estate, a claimed deduction or credit, gift tax paid within three years before death, adjusted taxable gifts, or gift tax paid and/or payable. If a settlement does not change the value of particular, identified property, the settlement does not impact the final value of the estate's property and is not a change requiring supplemental reporting with respect to that specific property. With respect to the second comment, an adjustment representing the final value for estate tax purposes undoubtedly gives rise to the statutory duty to supplement. In addition, an adjustment to value on a supplemental estate tax return becomes the reported value for purposes of section 6035(a)(1) and § 1.1014–10(b)(2) of the final regulations. Therefore, reporting a different value on a supplemental estate tax return also comes within the scope of an executor's duty to supplement. In response to these comments, § 1.6035–1(d)(2)(ii) of the final regulations clarifies that both a final determination of value of property for Federal estate tax purposes that differs from the value identified on a Statement or supplement to a Statement and an executor's reporting of a change in value on a supplemental estate tax return give rise to a duty to supplement.

Commenters objected to the rule in proposed § 1.6035–1(e)(2) providing that the discovery of unreported property is a change requiring supplemental reporting; they suggested that this is an

impermissible broadening of the estate tax filing requirement. In response, the final regulations instead provide that it is only the supplementing of an estate tax return, to report the value of previously unreported property, that triggers a duty to supplement the reporting under section 6035, and not the mere discovery of unreported property. Consistent with the definition of *included property* in §§ 1.1014–10(d)(4) and 1.6035–1(e)(1) of the final regulations, § 1.6035–1(d)(2)(iii) of the final regulations sets forth the rule that property that is included in a decedent's gross estate, either by the filing of an estate tax return, a supplemental estate tax return, or pursuant to an examination by the IRS or otherwise, will give rise to a duty to supplement if the fair market value of that property was not previously reported on the estate tax return or is changed.

The rule in proposed § 1.6035–1(e)(2) relating to a change in the property to be acquired by a beneficiary is updated in the final regulations to conform with the reporting requirements in the final regulations for property not acquired by a beneficiary before the due date or earlier filing date of the estate tax return. Section 1.6035–1(d)(2)(iv) of the final regulations provides that a change requiring supplemental reporting includes an executor's disposition of property in a transaction in which the basis of new property received by the estate is determined in whole or in part by reference to the final value of property acquired from the decedent or as a result of the death of the decedent (for example, as the result of a like-kind exchange or involuntary conversion). However, § 1.6035–1(d)(2)(iv) of the final regulations also imposes a duty to supplement if an executor furnishes a Statement to a beneficiary prior to the beneficiary's acquisition of property pursuant to the optional reporting afforded under § 1.6035–1(c)(5) of the final regulations and the beneficiary ultimately acquires property different than that identified on that Statement.

ii. Changes Not Requiring Supplemental Reporting

Section 1.6035–1(d)(3)(i) of the final regulations adopts the rule in proposed § 1.6035–1(e)(3)(i)(A) excluding from the duty to supplement changes to correct an inconsequential error or omission. However, the rule in proposed § 1.6035–1(e)(3)(i)(B) excluding from the duty to supplement a change in the distribution of property from that previously reported is omitted from the final regulations because it relates only to the proposed reporting requirements for property not acquired

by a beneficiary before the estate tax return due date. The reporting requirements for such property have been modified in the final regulations.

Section § 1.6035–1(d)(3)(ii) of the final regulations provides an exception to the duty to supplement for a change in value as the result of an event described in section 2032A(c)(1) that triggers an additional estate tax liability with regard to property for which a special use election was made, including a beneficiary's election to increase the beneficiary's basis in that property under section 1016(c) in response to that event. Although such an election by a beneficiary does result in a change in value under the rule in § 1.1014–10(b)(3)(ii), the qualified heir is in a better position than the executor to know this information, so no supplemental reporting is required of the executor. A commenter requested an example illustrating the adjustment to basis if there is a disposition of property subject to section 2032A under section 2032A(c)(1). Because an example would serve the purpose of illustrating the workings of section 1016(c), rather than the reporting requirements under section 6035, the Treasury Department and the IRS decline to include such an example in these regulations under section 6035.

Section 1.6035–1(d)(3)(iii) of the final regulations adopts the suggestion of a commenter by excepting from the duty to supplement any post-death or other adjustment to the basis of property made pursuant to sections of the Code other than section 1014(f). The executor generally is required to provide only supplemental Statements that show a change in the identification, value, or recipient of property as reported on the estate tax return. Therefore, section 6035 does not require the reporting of adjustments in basis attributable to the operation of Code sections other than section 1014(f). That commenter also suggested that the final regulations provide a uniform method for reporting post-death adjustments to the beneficiary if the executor chooses to do so. The Treasury Department and the IRS understand that an executor may choose to furnish a beneficiary information regarding changes to basis that occur pursuant to Code sections other than section 1014(f). If the executor does so, and if the executor chooses to use the Statement to provide that information, that information must be shown separately from the information required to be reported on the beneficiary's Statement.

Finally, § 1.6035–1(d)(3)(iv) of the final regulations provides an exception to the duty to supplement for any other

change that is identified as requiring no supplemental reporting under this section in guidance published in the future in the **Federal Register** or in the Internal Revenue Bulletin.

iii. Due Date of Supplemental Reporting

The rules in proposed § 1.6035–1(e)(4)(i) relating to the due date for supplemental reporting are updated in the final regulations to align with the modified reporting requirements in the final regulations. Section 1.6035–1(d)(4) of the final regulations provides that supplemental reporting is due on or before 30 days after the date on which information becomes available to the executor from which the executor can conclude that a change to the earlier reporting is required to be supplemented in accordance with these final regulations. Section 1.6035–1(d)(4) of the final regulations clarifies that, for changes occurring as a result of supplementing the estate tax return, the date on which that information becomes available to the executor is the filing date of the supplement to that return and, for changes occurring as a result of a determination of final value, that date is the date a value becomes the final value under § 1.1014–10(b)(1) of the final regulations. In the case of property not acquired by a beneficiary before the due date or earlier filing date of the estate tax return, § 1.6035–1(d)(4) of the final regulations provides that, for property for which a Statement has not been provided to the beneficiary pursuant to the option to furnish Statements prior to the acquisition of property by a beneficiary in § 1.6035–1(c)(5) of the final regulations, the due date of any required supplemental reporting may be delayed until the due date for supplemental reporting for subsequently-acquired property in § 1.6035–1(c)(3)(ii) of the final regulations.

iv. Duration of Duty To Supplement

Commenters inquired whether the executor's duty to file supplemental Information Returns and furnish supplemental Statements is limited in time. In response, § 1.6035–1(d)(5) of the final regulations is added to provide, in effect, that the duty to supplement is limited to changes that occur on or before the later of a beneficiary's acquisition of the property or the determination of the final value of the property under § 1.1014–10(b)(1) of the final regulations.

v. Illustration of Duty To Supplement

Section 1.6035–1(d)(6) was added to the final regulations to provide examples to illustrate the application of

the rules regarding the duty to supplement as provided in § 1.6035–1(d) of the final regulations.

E. Property for Which Reporting Is Required

Proposed § 1.6035–1(b)(1) provides in part that the property to which the section 6035 reporting requirements apply is all property reported or required to be reported on an estate tax return required under section 6018. The reporting requirements also apply to any other property the basis of which is determined in whole or in part by reference to the property described in the preceding sentence (for example, as the result of a like-kind exchange or an involuntary conversion).

As discussed in part 1.H of this Summary of Comments and Explanation of Revisions, the final regulations do not include the proposed zero basis rule for unreported property to which numerous commenters objected. Therefore, the final regulations narrow the scope of property for which reporting is required as compared to the rule in proposed § 1.6035–1(b)(1) that would have subjected all property reported or required to be reported on an estate tax return under section 6018. Section 1.6035–1(e)(1) of the final regulations provides that only property whose value is included in the value of a decedent's gross estate for Federal estate tax purposes (and any other property the basis of which is determined, in whole or in part, by reference to the basis of such included property) is subject to the section 6035 reporting requirements. Section 1.6035–1(e)(1) of the final regulations defines the term *included property* consistently with the definition of that term in § 1.1014–10(d)(4) of the final regulations to mean property the value of which is included in the value of the decedent's gross estate as defined in section 2031 or 2103. Section 1.6035–1(e)(1) of the final regulations further clarifies that included property does not include property whose value is not reported on an estate tax return and whose value is not otherwise included in the value of the decedent's gross estate as finally determined for Federal estate tax purposes.

Some commenters suggested that property subject to reporting should be limited to property to which the consistent basis requirement of section 1014(f) applies. While both sections 6035 and 1014(f) apply with respect to property includible in a decedent's gross estate only if an executor is required to file an estate tax return under section 6018, section 1014(f)(2) limits the application of the consistent basis requirement to property whose

inclusion in the gross estate increases the estate tax liability for the estate. Section 6035 includes no similar limitation and, therefore, applies to a broader universe of property than section 1014(f), and it applies whether or not any estate tax must be paid. Therefore, this comment is not adopted.

Another commenter sought clarification as to whether property for which a marital or charitable deduction is claimed is property for which reporting is required. Property that qualifies, in whole or in part, for a marital or charitable deduction for which a deduction is claimed is *included property* as that term is defined in § 1.6035–1(e)(1) of the final regulations. Accordingly, as § 1.6035–1(e)(1) of the final regulations also clarifies, such property is subject to reporting. Consequently, the executor is required to file an Information Return and to furnish Statements if the value of the estate is sufficient to require the filing of an estate tax return, even if no estate tax is due as a result of a charitable and/or marital deduction.

Some commenters had questions about the application of the reporting requirements to community property. Proposed § 1.6035–1(b)(1) provides that the reporting requirements are limited to only the decedent's one-half interest in community property. Commenters asked for confirmation that the reporting requirements do not apply to the surviving spouse's one-half interest in community property that is subject to section 1014(b)(6). Under section 1014(b)(6), the spouse's interest also is deemed to have been acquired from the decedent and thus is subject to the basis adjustment under section 1014(a). However, section 1014(a) and section 6035 are different. The spouse's interest is not includible in the decedent's gross estate and thus is not required to be reported on the estate tax return. Accordingly, § 1.6035–1(e)(1) of the final regulations sets forth the rule that the reporting requirements do not apply to the surviving spouse's interest in community property.

Some commenters asked whether there is a reporting requirement if the executor makes a non pro rata division and distribution of community property authorized by applicable State law. *See*, for example, West's Ann. Cal. Prob. Code sections 100(b) and 101(b). Under applicable State law, an executor may distribute the surviving spouse's interest in community property (property belonging to the surviving spouse, in which the decedent has no interest includible under section 2033) to a beneficiary other than the surviving spouse to satisfy a bequest. In lieu of the

surviving spouse's interest in the community property, the executor may distribute to the surviving spouse all or any part of decedent's interest in other property includible in the gross estate. The executor's distribution does not convert property included in the gross estate into property not included in the estate and, therefore, does not eliminate the applicability of the reporting requirements with regard to the property distributed to the surviving spouse. Accordingly, § 1.6035–1(e)(1) of the final regulations identifies, as property subject to reporting, property included in the decedent's gross estate that is distributed to a decedent's surviving spouse in lieu of the surviving spouse's interest in community property pursuant to State law.

Section 1.6035–1(e)(2) of the final regulations adds two examples to illustrate property subject to reporting under section 6035.

F. Excepted Property Requiring Only Limited Reporting

The proposed regulations under § 1.6035–1(b)(1) list four types of property proposed to be excepted from the reporting requirements: (i) cash (other than a coin collection or other bills or coins with numismatic value); (ii) income in respect of a decedent (as defined in section 691); (iii) tangible personal property for which an appraisal is not required under § 20.2031–6(b); and (iv) property sold, exchanged, or otherwise disposed of (and therefore not distributed to a beneficiary) by the estate in a transaction in which capital gain or loss is recognized.

Many commenters suggested additions or modifications to this list of exceptions. In response, the list in proposed § 1.6035–1(b)(1) is expanded in redesignated § 1.6035–1(f)(2) of the final regulations. A particular property included in the decedent's gross estate may qualify under more than one of these exceptions. In addition, § 1.6035–1(f)(1) of the final regulations explains the reporting requirements applicable to property described in § 1.6035–1(f)(2) of the final regulations, referred to as *excepted property*, and § 1.6035–1(f)(4) of the final regulations provides examples of excepted property and illustrates the reporting requirements applicable to this property. A discussion of the comments and responses to the comments follows.

i. Limited Reporting of Excepted Property

Some commenters noted that it is unclear whether an executor is subject to any reporting requirements under

section 6035 if all distributions from the estate are of property excepted from the reporting requirements by proposed § 1.6035–1(b)(1). For example, commenters questioned whether an executor is subject to any reporting requirements under section 6035 if the executor has liquidated (or will liquidate) the estate so that all distributions will be made in cash. In response, § 1.6035–1(f)(1) of the final regulations clarifies that included property is subject to more limited reporting if the property is *excepted property* (as identified in § 1.6035–1(f)(2)(i) through (xiv) of the final regulations). Specifically, the requirement to file an Information Return with the IRS pursuant to § 1.6035–1(c)(1) of the final regulations remains the same even if all property is excepted property. However, in the case of excepted property, an executor is required only to disclose on the Information Return that some or all of the property included in the decedent's gross estate is excepted from the full reporting requirements pursuant to § 1.6035–1(f)(2) of the final regulations; an executor is not required to identify the excepted property or to provide a Statement to a beneficiary with regard to excepted property.

ii. Exceptions for Cash and Other Property

Proposed 1.6035–1(b)(1)(i) excepts cash (other than a coin collection or other bills or coins with numismatic value) from the reporting requirements under section 6035. To provide more precision and clarity, § 1.6035–1(f)(2)(i) of the final regulations replaces the exclusion for cash with an exclusion for United States dollars. *United States dollars* are defined in § 1.6035–1(f)(3) of the final regulations as the official currency of the United States. For purposes of section 6035, the term United States dollars includes physical bills and coins if the value of each bill or coin is equivalent to the face amount of that bill or coin. This definition does not include other physical United States bills or coins with numismatic value because these bills or coins typically do not have a value equal to their face value.

Many commenters requested that the exception for cash in the proposed regulations be expanded to include cash equivalents. In response to these comments, § 1.6035–1(f)(2) of the final regulations expands the list of excepted property to include property the value of which is equal to its face value and that either is expressed in United States dollars or will be paid in United States dollars. This excepted property

includes: (1) United States dollar-denominated demand deposits; (2) Cash collateral denominated in United States dollars held by a third party to secure a liability (such as a deposit of purchase money or a security deposit); (3) Life insurance proceeds on the life of the decedent payable in a lump sum in United States dollars; and (4) Federal, State, and local tax refunds and other refunds payable in United States dollars. Certificates of deposit are excepted property because their Federal estate tax value generally equals their face value plus interest accrued to the date of death. Similarly, shares in money market funds are excepted property under the final regulations.

A commenter suggested that notes having a Federal estate tax value equal to the outstanding principal balance of the note should be considered a cash equivalent. Another commenter suggested that such notes should be excepted because the disposition of such property will never be a recognition event. The Treasury Department and the IRS decline to adopt these suggestions because notes have basis and the face value of the note may not always equal the final value of the note for Federal estate tax purposes. See § 20.2031–4. However, if a note is forgiven in full by the decedent at death, the underlying indebtedness is discharged and no property having basis remains for distribution to a beneficiary. Accordingly, excepted property also includes notes that are forgiven in full by the decedent at death, whether or not denominated in United States dollars.

In further response to the aforementioned comments as well as additional comments received regarding property qualifying for limited reporting under the cash exception, the Treasury Department and the IRS note that the following items do not fall within the list of excepted property in § 1.6035–1(f)(2) of the final regulations: (1) currency other than in United States dollars; (2) any payments not made in United States dollars; (3) life insurance policies not paid in United States dollars, and life insurance policies payable to a beneficiary in United States dollars annually or at some other interval for a period of time after the decedent's death; (4) notes (other than an installment obligation subject to section 453) that the decedent did not forgive in full upon the decedent's death, whether or not expressed in United States dollars; (5) U.S. Savings bonds; and (6) accounts receivable (unless such property consists entirely of the right to receive an item of income in respect of a decedent as defined in section 691 (IRD)). This property

generally has basis, its value generally may not equal its face value and, accordingly, this property is not excepted from the reporting requirements in the final regulations. For the same reasons, digital assets as defined in section 6045(g)(3)(D), including virtual currency² or cryptocurrency, do not fall within the list of excepted property set forth in § 1.6035–1(f)(2) of the final regulations. Consistent with all of the above, the list of excepted property is expanded and clarified in § 1.6035–1(f)(2) of the final regulations. With respect to future modifications to property qualifying as excepted property, § 1.6035–1(f)(2)(xiv) of the final regulations provides that excepted property will include any other property that is identified as excepted property in published guidance in the **Federal Register** or in the Internal Revenue Bulletin.

The Treasury Department and the IRS note that certain beneficiaries in receipt of included property may have a basis in that property different from the value of that property as expressed in United States dollars, and therefore may have to convert the final value of that property into a currency other than United States dollars in order to determine their initial basis in that property. Such a beneficiary includes a qualified business unit (within the meaning of section 989) of a person that has a functional currency other than the United States dollar. See sections 985 through 989 for rules regarding the functional currency of a qualified business unit.

iii. Exception for Household and Personal Effects

Proposed 1.6035–1(b)(1)(iii) excepts from the reporting requirements tangible personal property for which an appraisal is not required under § 20.2031–6(b). Section 20.2031–6(b) requires an appraisal if the decedent's household and personal effects include articles having marked artistic or intrinsic value with a total value in excess of \$3,000. In response to a comment, these items are described in the final regulations as household and personal effects, rather than as tangible personal property, to conform more closely with § 20.2031–6(b).

Commenters asked whether the \$3,000 threshold applies to each article

² Virtual currency is defined for Federal income tax purposes as a digital representation of value that functions as a medium of exchange, a unit of account, or a store of value other than the United States dollar or a foreign currency. See Notice 2014–21, 2014–16 I.R.B. 938; Rev. Rul. 2019–24, 2019–44 I.R.B. 1004. Some digital assets are referred to as virtual currency or cryptocurrency.

or to the collective value of all the tangible personal property includible in the gross estate. In addition, one commenter asked how to allocate the final value of articles of household and personal effects appraised as a single set or group if the estate distributes parts of that set or group among different beneficiaries (for example, the gross estate includes a 24-piece silver flatware set with a final value of \$4,000, and the set is divided between two beneficiaries). The commenter suggested that the executor be given the authority to use any reasonable method to allocate the final value (and thus the basis) of the parts of the set or group among the beneficiaries. Finally, commenters noted that the \$3,000 threshold amount found in § 20.2031-6(b) has remained static since 1958 and asked that it be increased.

The Treasury Department and the IRS understand the need for clarity on how to apply the exception in the proposed regulations for tangible personal property. However, addressing this issue in the final regulations necessarily would impact determinations of whether an appraisal is required under § 20.2031-6(b) and how to allocate the value of estate property among beneficiaries. These issues, including any change to the threshold amount under § 20.2031-6(b), are more appropriately addressed in guidance under section 2031 related to the valuation of household and personal effects. Accordingly, § 1.6035-1(f)(2)(ix) of the final regulations preserves the exception and does not address the commenters' questions.

iv. Exceptions for Property Whose Basis Is Unrelated to the Federal Estate Tax Value of the Property

Because section 1014(a) does not apply to the right to income in respect of a decedent as defined in section 691 (IRD), the Federal estate tax value of IRD does not affect its basis in the hands of the beneficiary acquiring that property. Accordingly, proposed § 1.6035-1(b)(1)(ii) excepts IRD from the reporting requirements. The Treasury Department and the IRS deem it appropriate in the final regulations to more generally except from full section 6035 reporting requirements property having a basis that is determined without reference to the property's Federal estate tax value, including IRD. A beneficiary receiving such property has no need to receive a Statement providing the Federal estate tax value of such property. Several types of IRD are listed separately in the regulations. These assets, such as individual retirement accounts (IRAs), may have an

IRD component and a non-IRD component of basis. The following paragraphs discuss comments relating to reporting exceptions or suggested exceptions for property having a basis that is determined without reference to the property's Federal estate tax value.

Multiple commenters sought clarification on whether certain IRD property having a basis component is excepted from the full section 6035 reporting requirements, particularly in the case of certain retirement plans, annuities, installment obligations, and interests in passthrough entities holding an item of IRD.

With regard to annuity contracts subject to section 72 and installment obligations subject to section 453, commenters suggested that the final regulations clarify that, despite having a basis component, such property be excepted because no basis adjustment occurs with respect to such property at the decedent's death. The Treasury Department and the IRS agree and, accordingly, such property is identified in § 1.6035-1(f)(2)(xi) of the final regulations as examples of property having a basis that is determined without reference to the property's Federal estate tax value. For the same reason, § 1.6035-1(f)(2)(xi) of the final regulations also includes, as an example of such excepted property, any amounts received under an annuity contract, such as a lump sum payment paid to terminate an annuity contract or a death benefit paid under an annuity contract.

Multiple commenters sought clarification as to whether IRAs and other retirement plans and deferred compensation plans come within the IRD exception in the proposed regulations. Commenters noted that, in certain scenarios, a decedent will have basis in such an account or plan, in addition to IRD. One commenter asserted that the reporting typically required for these accounts or plans outside of the section 6035 reporting requirements is sufficient and suggested adding an exception to the final regulations so that the section 6035 reporting requirements will not apply to property in or distributions from retirement plans (whether or not tax-deferred). Such property, when acquired from a decedent, generally has a basis that is determined without reference to the property's Federal estate tax value. Therefore, distributions from retirement plans and deferred compensation plans, including individual retirement arrangements as defined in sections 408 and 408A, are included as examples of property coming within the exception from full reporting in § 1.6035-1(f)(2)(xi) of the final regulations.

In other instances in which property consists only in part of a right to receive IRD, such as an interest in a passthrough entity that holds an interest constituting IRD, commenters sought clarification on the scope of the IRD exception to section 6035 reporting. In most cases, the basis of such property is determined under section 1014(a), even though the basis under section 1014(a) may be adjusted to account for the items of IRD. Because the Federal estate tax value of such property is relevant to the determination of the recipient's basis in the property, such property does not come within the exception for property having a basis determined without reference to the property's Federal estate tax value in § 1.6035-1(f)(2)(xi) of the final regulations. That exception is limited to property that consists entirely of IRD.

Finally, in response to other requests for clarification, appreciated property described in section 1014(e) that is acquired by a decedent within 1 year of death, for which basis is not adjusted under section 1014(a), also is included as an example of property coming within the exception from full reporting in § 1.6035-1(f)(2)(xi) of the final regulations.

v. Exceptions for Property Sold, Exchanged, or Disposed of Prior to Distribution

Proposed § 1.6035-1(b)(1)(iv) excepts property sold, exchanged, or otherwise disposed of (and therefore not distributed to a beneficiary) by the estate in a transaction in which capital gain or loss is recognized. Commenters asserted that this exception as proposed suggests that the reporting requirements would continue to apply to property sold, exchanged, or otherwise disposed of by the estate if no gain or loss is recognized because the sales price equals the estate's basis in the property. Commenters suggested, and the Treasury Department and the IRS agree, that the reporting requirements should not apply to property disposed of in a recognition transaction for the estate for income tax purposes, whether or not gain or loss is recognized, because the basis of this property is no longer related to the property's Federal estate tax value. The Treasury Department and the IRS also agree with commenters that, for purposes of the reporting required under section 6035, it is irrelevant whether any gain or loss the estate recognizes is capital or ordinary. The final regulations under § 1.6035-1(f)(2)(x) include these clarifying changes. In addition, in response to requests for additional clarification, § 1.6035-1(f)(2)(x)(A) through (E) of the

final regulations include examples of excepted property pursuant to this rule as follows: (1) property distributed in satisfaction of a pecuniary bequest on which the estate recognizes any gain or loss pursuant to § 1.661(a)–2(f); (2) property for which an election under section 643(e)(3) has been made for the estate to recognize any gain or loss; (3) interests in business entities that are redeemed for United States dollars prior to distribution to a beneficiary; (4) property disposed of in a transaction described in section 267(a) and (b)(13), which disallows a loss from the sale or exchange of property, directly or indirectly, between the executor and the beneficiary of the estate, except in a sale or exchange in satisfaction of a pecuniary bequest; and (5) property subject to the mark to market accounting method at the time of distribution from the estate or from the decedent's revocable trust.

Similarly, § 1.6035–1(f)(2)(xii) of the final regulations excepts bonds to the extent that they are redeemed by the issuer for United States dollars prior to being distributed to a beneficiary so that any gain or loss is recognized by the estate.

vi. Exception for Property Included in the Gross Estate of a Beneficiary

A commenter suggested that an exception to the reporting requirements should apply if the beneficiary of property acquired from a decedent dies shortly after that decedent and that property then is included in the deceased beneficiary's gross estate. In this case, the deceased beneficiary does not need a Statement identifying the value of that property because the basis of that property will be determined as of the beneficiary's date of death, thus independently of the determination of the final value of that property in the decedent's estate. Accordingly, § 1.6035–1(f)(2)(xiii) of the final regulations identifies property included in the gross estate of a beneficiary who died before the due date of the Information Return as excepted property subject to only limited reporting.

vii. Publicly Traded Securities

Two commenters suggested that publicly traded securities should be excepted from the reporting requirements, both to reduce burden and because § 1.6045A–1(b)(8) already requires basis reporting for certain publicly traded securities. This suggestion is not adopted in the final regulations because, while § 1.6045A–1(b)(8) requires basis reporting between brokers if certain securities are transferred, it does not always require

reporting to the IRS and the beneficiary. It would be burdensome for both taxpayers and the IRS to distinguish between those covered securities and others, including shares held in certificate form, for purposes of complying with these reporting requirements. Further, the information to be transferred between brokers might not always be the final value of the security for Federal estate tax purposes. Additional detailed information regarding the reporting of securities requested by commenters may be provided in forms and instructions.

viii. Other

One commenter requested a reporting exception for property transferred to a charity or nonresident who is not a citizen of the U.S. (nonresident noncitizen) based on the assumption that charities and nonresident noncitizens have no need for basis information. Basis information for such property is relevant in certain circumstances, such as for the computation of the excise tax on a private foundation, and, therefore, this suggestion is not adopted.

G. Identification of Beneficiaries

The proposed regulations under § 1.6035–1(c)(1) describe the reporting requirements as they apply to different beneficiaries, including a beneficiary who is also an executor, a beneficiary of a life estate, a beneficiary of a remainder interest and a beneficiary of a contingent interest. Proposed § 1.6035–1(c)(2) describes the reporting requirements as they apply to a beneficiary that is a trust, estate, or other entity. Proposed § 1.6035–1(c)(3) describes the reporting requirements applicable if the beneficiary of particular included property has not been identified by the due date of the required reporting. Finally, proposed § 1.6035–1(c)(4) describes the reporting requirements applicable if a beneficiary cannot be located by the executor.

As discussed in part 2.C.i. of this Summary of Comments and Explanation of Revisions, many commenters objected to the proposed reporting requirements under § 1.6035–1(c)(3) that would have applied in the case of an executor who has not determined what property will be used to satisfy the interest of each beneficiary by the due date of the Information Return. The section 6035 reporting requirements have been modified in § 1.6035–1(c) of the final regulations to address the concerns of the commenters. However, additional comments were received on the other beneficiary provisions in proposed § 1.6035–1(c). A discussion of

these comments and responses to these comments, as well as a discussion of certain clarifying changes made in § 1.6035–1(g) of the final regulations, follows.

i. Definition of Beneficiaries

Section 1.6035–1(g)(1) of the final regulations defines the term *beneficiary* to refer to a person who acquires (or will acquire) property subject to reporting described in § 1.6035–1(e) of the final regulations. A beneficiary may be an individual (including one who is the executor as well as a beneficiary), the estate of a deceased individual who survived the decedent, a trust (referred to as a *beneficiary trust*), or an entity other than a trust, including without limitation a business entity or an organization described in section 501(c).

ii. Beneficiary Trust

Proposed § 1.6035–1(c)(2) directs that, if the beneficiary is a trust, estate, or other entity, the executor is to furnish the beneficiary's Statement to the trustee of the trust or similar representative of the estate or other entity, rather than to the beneficiaries or other owners of that trust or other entity. This provision generated several comments. Some commenters questioned whether the Statement should be given to the trustee or to the trust's beneficiary. They noted that, because there are many different types of trusts and varying circumstances, an inflexible rule is not necessarily appropriate in this context. For instance, some trusts terminate at death or shortly thereafter and the trustee distributes the trust property in kind, while other trusts continue in existence for many generations. In some cases, it may be unclear when a trust terminates because an existing trust may be decanted or divided into several trust shares or different trusts. Some trusts are for the benefit of only one beneficiary, such as a marital trust, but other trusts may be for a class of different beneficiaries. In addition, sometimes, the executor may not be able to get information about the provisions or beneficiaries of an inter vivos trust, although the trust property is includible in the decedent's gross estate for Federal estate tax purposes.

After consideration of the comments, the Treasury Department and the IRS agree that there are circumstances under which it would be appropriate for an executor to furnish the Statement to the trustee of a beneficiary trust and different circumstances warranting the furnishing of the Statement directly to the trust beneficiary(s). Section 6035 contemplates that the Statement will be

received by a person or entity that is likely to engage in an income tax recognition event with respect to the property. A trust that terminates at the death of the decedent or shortly thereafter is unlikely to have such an event, unlike a trust that continues for many years. Any rule attempting to distinguish between these different circumstances would be both complex and likely to fail to address the entire universe of possibilities.

Accordingly, in order to respond to the comments, and to avoid undue complexity in regulations, the Treasury Department and the IRS conclude that it is appropriate to adopt a flexible rule for identifying the beneficiary to whom the executor must furnish the Statement in the case of a beneficiary trust. Section 1.6035-1(g)(2)(i) of the final regulations provides that the executor must furnish the Statement to the trustee, rather than to the beneficiaries of the trust, but allows the executor instead to furnish the Statement directly to the beneficiaries of the trust, with a copy to the trustee, if the executor reasonably believes that it is unlikely that the trust will depreciate, sell, or otherwise dispose of the property in a recognition event for income tax purposes. For this purpose, a trust's beneficiaries include all potential current income beneficiaries and each remainderman who would have had a current interest in the trust if one or more of the income beneficiaries had died immediately before the decedent.

Commenters also requested clarification of the executor's obligation to furnish a Statement regarding the property of an inter vivos trust included in the decedent's gross estate for Federal estate tax purposes. In this situation, the executor is not distributing the trust property to the trustee and, assuming the executor reported the trust on the estate tax return, the trustee is not the executor required to file that estate tax return. If the trust property is reported on the estate tax return filed by the executor of the estate, that executor is subject to the reporting requirements as described in this section with regard to the trust property. Except for the reporting required under § 1.6035-1(h) of the final regulations, it is only in the situations described in § 1.6035-1(b)(2) of the final regulations, in which a trustee of a trust might be an executor required to file an estate tax return with regard to trust property, that the trustee would be required to file the Information Return and Statement(s) with regard to the trust property reported on the estate tax return filed by that trustee.

Commenters requested guidance on how to comply with the reporting requirements to a beneficiary trust if that trust is not yet established by the due date of the Information Return. In response, § 1.6035-1(g)(2)(ii) of the final regulations provides that, if by the due date of the Information Return, a beneficiary trust does not have at least one trustee and a tax identification number from the IRS, an executor must report on the Information Return that the beneficiary trust is not yet established in accordance with the instructions. Supplemental reporting is required once the beneficiary trust is established.

iii. Furnishing Statement to Beneficiary of Split Interest in Property, Not in Trust

Section 1.6035-1(g)(3) of the final regulations retains and clarifies certain aspects of the rules in proposed § 1.6035-1(c)(1) applicable to beneficiaries of split interests in property not in trust. Under § 1.6035-1(g)(3) of the final regulations, the beneficiary of a life estate not in trust is the life tenant, and the beneficiary of a remainder interest not in trust is each remainderman, identified as if the life tenant were to die immediately after the decedent. For purposes of determining the due date for furnishing Statements to such beneficiaries under § 1.6035-1(c)(3) of the final regulations, each beneficiary will be deemed to have acquired the property subject to reporting on the date of the decedent's death. Section 1.6035-1(g)(3) of the final regulations further provides that the beneficiary of a contingent interest not in trust is a beneficiary only if the contingency occurs before the end of the period during which the executor has an obligation to supplement the reporting as provided in § 1.6035-1(d)(5) of the final regulations. If the contingency occurs during this period, § 1.6035-1(g)(3) of the final regulations provides that the executor must update the beneficiary information on the Information Return and furnish a Statement to that beneficiary pursuant to the executor's duty to supplement to report a change in beneficiary information as described in § 1.6035-1(d) of the final regulations. Section 1.6035-1(g)(3) of the final regulations clarifies that usufruct interests are treated in the same manner.

Several commenters requested confirmation that, for purposes of complying with the reporting requirements of section 6035(a), the executor is not required to determine the allocation of uniform basis among the beneficiaries with interests in an

asset for different periods of time. The Treasury Department and the IRS agree that nothing in section 6035(a) requires the executor to report to a beneficiary of such an interest that beneficiary's share of uniform basis as of the decedent's date of death. It is only the value of the entire property that is the subject of the required reporting. Therefore, § 1.6035-1(c)(2) of the final regulations provides that an executor is required to identify the property acquired by the beneficiaries, the value of the property as reported on the estate tax return filed with the IRS, and such other information prescribed by the Statement and the instructions.

iv. Reporting for a Missing Beneficiary

In response to comments, § 1.6035-1(g)(4) of the final regulations modifies the rule in proposed § 1.6035-1(c)(4) with regard to the applicable reporting requirements if the executor cannot locate a beneficiary. The proposed rule provides that an executor must use reasonable due diligence to identify and locate all beneficiaries and, if the executor is unable to locate a beneficiary by the due date of the Information Return, the executor must so report on the Information Return and explain the efforts the executor has taken to locate the beneficiary and to satisfy the obligation of reasonable due diligence. Commenters requested an explanation or definition of "reasonable due diligence" for this purpose. In referencing "reasonable due diligence" in the proposed regulations, the Treasury Department and the IRS intended only to reference an executor's responsibility as a fiduciary under local law to identify and locate all beneficiaries and did not intend to create a new standard. Therefore, the requirement of due diligence is removed in the final regulations. Instead, § 1.6035-1(g)(4) of the final regulations provides that, if the executor is unable to locate a beneficiary by the date required for filing the Information Return with the IRS, then the executor must report on the Information Return the failure to locate the beneficiary and the efforts the executor has made to locate the beneficiary. The final regulations retain the requirement to supplement the Information Return and to furnish the required Statement to the beneficiary once the beneficiary has been located or, if the beneficiary is not located, to report the distribution of the property to a different beneficiary.

H. Subsequent Transfers of Property Subject to Reporting

Proposed § 1.6035-1(f) would impose a reporting requirement with regard to

certain subsequent transfers of property previously reported (or required to be reported) on a Statement. Specifically, it would require the recipient of property to which section 6035 applies to file with the IRS a supplemental Information Return, and to furnish to a transferee of the property a Statement, if the recipient (who becomes the transferor) distributes or transfers all or any portion of that property in a transaction in which the transferee determines its basis, in whole or in part, by reference to the transferor's basis.

Commenters asserted that section 6035 imposes reporting requirements on executors, but not on subsequent transferees and, therefore, the Treasury Department and the IRS lack authority to require reporting under section 6035 by beneficiaries who subsequently transfer property acquired from a decedent. Commenters also noted that this reporting requirement could continue for generations, and thus be impossible for the IRS to monitor and enforce, especially with respect to nonresident non-citizen beneficiaries if the property is no longer in the United States. Commenters also noted that this subsequent reporting requirement creates uncertainty for executors, estate tax return preparers, and beneficiaries as to whether supplemental reporting is required, and that the failure to comply with the reporting requirement is subject to penalties. They contended this requirement is particularly unfair with respect to unsophisticated individual recipients who are likely to be unaware of the reporting requirements and, as a result, are more likely to become subject to noncompliance penalties. Finally, commenters noted that, in many cases, the obligation to report the basis of property transferred is duplicative of other required filings.

The Treasury Department and the IRS carefully have reconsidered the benefits and burdens of the proposed subsequent reporting requirement in light of these comments. The enactment of section 1014(f) created the consistent basis requirement, and the enactment of section 6035 gave the IRS the ability to enforce the provisions of section 1014(f) and the related penalty under section 6662(k) for use of an inconsistent estate basis for income tax purposes. Without this proposed reporting requirement, subsequent ownership changes made through nonrealization events would erode the ability of the IRS to enforce the consistent basis requirement under section 1014(f) and the penalty under section 6662(k) for violations of that requirement.

Nevertheless, the Treasury Department and the IRS conclude that the burden of the proposed subsequent reporting requirement, including the potential penalties for noncompliance, is too heavy a burden to impose on individual beneficiaries who, as a practical matter, may have no way of knowing of the existence of, or of how to comply with, this subsequent reporting requirement. The Treasury Department and the IRS, however, also conclude that trustees of trusts are one class of beneficiaries for whom the subsequent reporting requirement would not be sufficiently burdensome to outweigh the needs of, and benefits to, the IRS and trust beneficiaries. Generally, the trustee of a trust is likely to be aware of applicable tax requirements and to be both able and motivated to comply with these requirements. In addition, in discharging the trustee's fiduciary obligations to the trust beneficiaries, a trustee is likely (even without a supplemental reporting requirement) to provide certain relevant information (such as basis) to the beneficiary to whom the trustee is distributing a trust asset.

Accordingly, the final regulations retain a reporting requirement for subsequent transfers, but this requirement is narrowed significantly. Under § 1.6035-1(h)(1) of the final regulations, reporting requirements are imposed on trustees of beneficiary trusts making a distribution of property that was reported on a Statement furnished to those trustees, or of any other property the basis of which is determined, in whole or in part, by reference to the basis of this property. Such a trust distribution includes, for example, a transfer of trust property pursuant to the exercise or lapse of a person's power of appointment (whether general or limited). That section further provides that trustees of trusts that receive a distribution of such property, whether from a beneficiary trust or from any other trust that has received such property, either directly or indirectly, also are subject to these reporting requirements when making a distribution of that property. This reporting obligation imposed on trustees continues to apply for each subsequent transfer or distribution until the property is distributed to a beneficiary not in trust. However, these reporting requirements do not apply if property is disposed of by the trustee in a transaction that is a recognition event for income tax purposes (whether or not resulting in a gain or loss) that results in the entire property having a basis that

no longer is related, in whole or in part, to the property's final value or, if applicable, reported value (within the meaning of § 1.1014-10(b)(1) or (2) of the final regulations, respectively).

By imposing a reporting obligation on trustees of beneficiary trusts and certain other recipient trusts, the final regulations ensure that an individual or entity likely to incur an income tax realization event with respect to the trust property has the necessary information to determine the correct initial basis. This facilitates the proper reporting of basis and compliance with the consistent basis requirement if it is applicable.

Finally, to reduce burden and improve administrability, § 1.6035-1(h)(2) of the final regulations adopts the same due date for the filing of the Information Return and the furnishing of the Statement with regard to distributions of property by trustees as is required under § 1.6035-1(c)(3)(ii) of the final regulations, which is January 31 of the year following the distribution. Section 1.6035-1(h)(3) of the final regulations adds an example illustrating the application of the reporting requirements applicable to trustees making subsequent transfers of property if the property is subject to reporting under § 1.6035-1(e) of the final regulations.

I. Penalties

Section 1.6035-1(i) of the final regulations provides a cross-reference to sections 6721 through 6724 and the regulations in part 301 under sections 6721 through 6724 that impose penalties on the failure to timely file a correct Information Return and the failure to timely furnish a correct Statement as required by section 6035. Sections 301.6721-1(h)(2)(xii) and 301.6722-1(e)(2)(xxv) of these final regulations clarify that the penalties under those sections also apply to the failure to report as required by section 6035. A penalty applies separately to each initial or supplemental Information Return that the executor is required to file with the IRS, and to each initial or supplemental Statement that the executor is required to furnish to a beneficiary. Accordingly, only one penalty under section 6721 may be imposed for filing an incorrect Information Return, even if copies of multiple required Statements are not attached to the Information Return, but multiple penalties under section 6722 may be imposed for furnishing multiple incorrect Statements, even if the Statements were filed with the IRS as attachments to a single Information Return. Section 1.6035-1(i) of the final

regulations also refers to section 6724 and the regulations in part 301 under section 6724 for rules relating to waivers of these penalties if it is shown that the failure was due to reasonable cause and not to willful neglect.

For purposes of applying these penalties, commenters inquired whether an appointed executor is relieved of the reporting requirements if a successor executor is appointed. The issue of an executor's continuing liability under the Code if a successor executor is appointed is not limited to the section 6035 reporting requirements and may depend on varying factors, including local law. Accordingly, this issue is outside the scope of these regulations and is not addressed in these final regulations.

Multiple commenters inquired about how to complete the Information Return and Statements in various scenarios, such as cases in which a nonresident noncitizen is a beneficiary and has no tax identification number, a partnership is a beneficiary, an executor reports bulk assets and brokerage accounts on an estate tax return, and others. To the extent not otherwise addressed in the final regulations or this preamble, these comments are best considered in contemplation of necessary or appropriate revisions to the Information Return and its instructions.

J. Applicability Date

Proposed § 1.6035–1(i) provides that, upon publication of the Treasury Decision adopting these rules as final in the **Federal Register**, § 1.6035–1 of the final regulations will apply to property acquired from a decedent or by reason of the death of a decedent whose estate tax return is filed after July 31, 2015. The final regulations revise the applicability date of § 1.6035–1(i) of the proposed regulation consistent with section 7805(b)(1). Accordingly, § 1.6035–1(j) of the final regulations does not reference the July 31, 2015, effective date of section 6035, and provides instead that § 1.6035–1 of the final regulations applies to executors of a decedent's estate who are required to file an estate tax return under section 6018 if that return is filed after the date of publication of these final regulations in the **Federal Register**, and to trustees receiving certain property included in the gross estate of such a decedent.

3. Section 6662—Inconsistent Estate Basis Reporting

Section 6662(a) and (b)(8) impose an accuracy-related penalty on the portion of any underpayment of tax relating to property subject to the consistent basis requirement that is attributable to an

inconsistent estate basis. Proposed § 1.6662–8(b) provides that there is an inconsistent estate basis to the extent that a taxpayer claims a basis, without regard to the adjustments described in proposed § 1.1014–10(a)(2), in property described in proposed § 1.6662–8(c) that exceeds that property's final value as determined under proposed § 1.1014–10(c). Proposed § 1.6662–8(c) provides that proposed § 1.6662–8(b) applies to property described in proposed § 1.1014–10(b) that is reported or required to be reported on an estate tax return filed after July 31, 2015.

One commenter noted that the phrase “without regard to the adjustments described in § 1.1014–10(a),” as used in proposed § 1.6662–8(b), eliminates adjustments that correctly may be made by other sections of the Code on or after the decedent's date of death. The commenter's concern was that this language would void the effects of, or disallow the adjustments available under, other sections of the Code.

Section 1.6662–9(b) of the final regulations clarifies that there is an inconsistent estate basis to the extent that a taxpayer claims a basis that was determined by using an initial basis as defined in § 1.1014–10(a)(2) of the final regulations that exceeds the property's final value as determined under § 1.1014–10(b)(1) of the final regulations. The property to which this section applies is property described in § 1.1014–10(c)(1) of the final regulations. In addition, § 1.1014–10(a)(2) of the final regulations confirms that the taxpayer may compute basis at any time by adjusting the property's initial basis due to the operation of other provisions of the Code without violating the consistent basis requirement. Section 1.6662–9(b)(2) of the final regulations provides an example illustrating the provisions of § 1.6662–9(b) of the final regulations. The provisions regarding the reasonable cause exception to the penalty are contained in section 6664 and the regulations in part 1 under section 6664.

In the final regulations, proposed § 1.6662–8 has been redesignated as § 1.6662–9. Section 1.6662–8 is being reserved for future regulations to address other provisions under section 6662.

Special Analyses

1. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of

Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

2. Paperwork Reduction Act

The collection of information contained in these final regulations has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2264. On March 4, 2016, proposed regulations (REG–127923–15) were published in the **Federal Register** (81 FR 11486). The proposed regulations proposed amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301). Comments were specifically requested concerning (1) whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; (2) the accuracy of the estimated burden associated with the proposed collection of information; (3) how the quality, utility, and clarity of the information to be collected may be enhanced; (4) how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

During the comment period, the IRS received 5 comments on the collection of information. With respect to the necessity and utility of the proposed collection of information, a commenter contended that the reporting requirements in section 6035 are intended solely to implement and enforce the basis consistency requirement under section 1014(f) and, therefore, reporting should be limited to property subject to section 1014(f). The Treasury Department and the IRS did not accept this recommendation because this comment appears to be based on a budget proposal rather than on section 6035 as enacted and its history. See U.S. Dept. of the Treasury, *General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals*, 160–161 (2014). Based on the language of section 6035(a)(1) and (2), Congress mandated that reporting apply to a larger universe of property than the universe of property subject to the consistent basis requirement under section 1014.

Regarding the accuracy of the estimated burden associated with the collection of information, commenters indicated that the IRS estimate of the total annual reporting burden per respondent of 5.31 hours was too low. Commenters estimated that the total annual reporting burden per respondent should be 20 to 50 hours. Taking into account the input from the commenters regarding the number of hours needed to comply, as well as new rules in the final regulations that reduce certain reporting burdens, the Treasury Department and the IRS increased the estimated total annual reporting burden per respondent from 5.31 hours to 20 hours.

With respect to how the burden of complying with the proposed collection of information may be minimized, a commenter suggested that the IRS could minimize the burden of complying with the proposed collection of information by accepting Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, and Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, along with a statement identifying the beneficiaries, rather than requiring duplicative reporting on the 6035 Information Return (currently, Form 8971, *Information Regarding Beneficiaries Acquiring Property From a Decedent*). Another commenter suggested that, if the executor is the only beneficiary required to receive the Statement, the IRS could reduce the cost of compliance by allowing the executor to check a box on Form 706 certifying that fact. This commenter also suggested that the reporting requirements could be satisfied by giving beneficiaries an appropriately redacted copy of the filed Form 706.

The Treasury Department and the IRS did not accept this recommendation because the filing of Form 709 does not trigger a section 6035 filing requirement of Form 8971 and Schedule A. Further, through its amendment of section 6724(d)(1) and (2) and the enactment of section 6035, both pursuant to section 2004 of the 2015 Act, Congress identified the statement required by section 6035(a)(1) and (2) to be filed with the IRS as an *information return*, and the statement required by section 6035(a)(2) to be furnished to a beneficiary as a *payee statement*. The Treasury Department and the IRS conclude that replacing the information return and payee statement identified in section 6724 with a beneficiary statement attached to the Form 706, a redacted Form 706, or the checking of a box on the Form 706 would be contrary to legislative intent and the

statutory language of section 6724(d)(1)(D) and (d)(2)(II).

A commenter suggested that the optional ability to electronically file returns, including Forms 706 and 709, would facilitate compliance with the section 6035 reporting requirements and enhance efficiency. The Treasury Department and the IRS concur that the ability to electronically file not only Forms 706 and 709, but also Form 8971 and Schedule A, would facilitate compliance with the section 6035 reporting requirements and enhance efficiency. At this time, however, taxpayers are unable to electronically file Forms 706 and 709.

Several comments were received with substantive recommendations that relate to whether the collection of information will have practical utility and how the burden of compliance could be minimized (including specific recommendations to expand the exceptions to the section 6035 reporting requirements, modify the reporting requirements in certain circumstances, and limit or eliminate the subsequent transfer reporting requirement). These comments are addressed in the Summary of Comments and Explanation of Revisions section of this preamble.

The collection of information in these final regulations is in § 1.6035–1(c)(1) and (2), (d)(1) and (2), and (h)(1) and (2). The collection of information is necessary to comply with the reporting requirements under section 6035(a). The likely respondents are executors and other persons required to file an estate tax return under section 6018 and trustees making in-kind distributions of property that was subject to reporting under section 6035 when initially acquired by the trustee.

Estimated number of respondents: 10,000.

Estimated average annual burden per respondent: 20 hours.

Estimated total annual reporting burden: 200,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the OMB.

3. Regulatory Flexibility Act

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule primarily affects individuals (or their estates) and trusts, which are not small entities as defined by the Regulatory Flexibility Act (5 U.S.C.

601). Although it is anticipated that there may be an incremental economic impact on executors that are small entities, including entities that provide tax and legal services that assist individuals in preparing tax returns, any impact would not be significant and would not affect a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

4. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. The final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

5. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office,

Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal authors of these final regulations are Donna Douglas, Melissa Liquerman, and Karlene Lesho of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS are amending 26 CFR parts 1 and 301 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising entries for §§ 1.1014–1 and 1.1014–2, and adding entries for §§ 1.1014–10, and 1.6035–1 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1014–1 also issued under 26 U.S.C. 1014(f).

Section 1.1014–2 also issued under 26 U.S.C. 1014(f).

Section 1.1014–10 also issued under 26 U.S.C. 1014(f).

* * * * *

Section 1.6035–1 also issued under 26 U.S.C. 6035.

* * * * *

■ **Par 2.** Add § 1.1014–0 to read as follows:

§ 1.1014–0 Table of contents.

This section lists the captions contained in §§ 1.1014–1 through 1.1014–10.

§ 1.1014–1 Basis of property acquired from a decedent.

(a) General rule.

(b) Scope and application.

(c) Property to which section 1014 does not apply.

(d) Applicability date.

§ 1.1014–2 Property acquired from a decedent.

(a) In general.

(b) Property acquired from a decedent dying after December 31, 1953.

(1) In general.

(2) Rules for the application of paragraph (b)(1) of this section.

(3) Exceptions to application of this paragraph.

(c) Special basis rules with respect to certain property acquired from a decedent.

(1) Stock or securities of a foreign personal holding company.

(2) Spouse's interest in community property of decedent dying after October 21, 1942, and on or before December 31, 1947.

§ 1.1014–3 Other basis rules.

(a) Fair market value.

(b) Property acquired from a decedent dying before March 1, 1913.

(c) Reinvestments by a fiduciary.

(d) Reinvestments of property transferred during life.

(e) Alternate valuation dates.

§ 1.1014–4 Uniformity of basis; adjustment to basis.

(a) In general.

(b) Multiple interests.

(c) Records.

(d) Effective/applicability date.

§ 1.1014–5 Gain or loss.

(a) Sale or other disposition of a life interest, remainder interest, or other interest in property acquired from a decedent.

(b) Sale or other disposition of certain term interests.

(1) In general.

(2) Effective/applicability date.

(c) Sale or other disposition of a term interest in a tax-exempt trust.

(1) In general.

(2) Tax-exempt trust defined.

(3) Taxable beneficiary defined.

(4) Effective/applicability date.

(d) Illustrations.

§ 1.1014–6 Special rule for adjustments to basis where property is acquired from a decedent prior to his death.

(a) In general.

(b) Multiple interests in property described in section 1014(b)(9) and acquired from a decedent prior to his death.

(c) Adjustments for deductions allowed prior to the decedent's death.

§ 1.1014–7 Example applying rules

§§ 1.1014–4 through 1.1014–6 to case involving multiple interests.

§ 1.1014–8 Bequest, devise, or inheritance of a remainder interest.

§ 1.1014–9 Special rule with respect to DISC stock.

(a) In general.

(b) Portion of property acquired from decedent before his death included in decedent's gross estate.

(1) In general.

(2) Example.

(c) Estate tax valuation date.

(d) Examples.

§ 1.1014–10 Basis of property acquired from a decedent must be consistent with property's Federal estate tax value.

(a) Consistent basis requirement.

(1) General rule.

(2) Initial basis in consistent basis property and effect of basis adjustments.

(3) Duration of consistent basis requirement.

(b) Final value and reported value.

(1) Final value.

(2) Reported value if no final value yet determined.

(3) Special rules.

(c) Consistent basis property.

(1) Property subject to the consistent basis requirement.

(2) Property excepted from or not subject to the consistent basis requirement.

(d) Definitions.

(e) Examples.

(f) Applicability date.

■ **Par. 3.** Section 1.1014–1 is amended by:

■ 1. Adding two sentences after the fourth sentence of paragraph (a).

■ 2. Revising the last sentence and adding two sentences after the last sentence of paragraph (b).

■ 3. Revising paragraphs (c) and (d).

The addition and revisions read as follows:

§ 1.1014–1 Basis of property acquired from a decedent.

(a) * * * For certain property acquired from a decedent, the initial basis of the property must not exceed the property's final value for Federal estate tax purposes. *See* section 1014(f) and § 1.1014–10 for rules relating to the consistent basis requirement. * * *

(b) * * * In §§ 1.1014–1 to 1.1014–6, inclusive, and § 1.1014–10, whenever the words *property acquired from a decedent* are used, they also mean *property passed from a decedent*, and the phrase *person who acquired it from the decedent* includes the *person to whom it passed from the decedent*. The consistent basis rules in § 1.1014–10 apply to property subject to the consistent basis requirement, as described in § 1.1014–10(c)(1). For property subject to the consistent basis requirement, the rules in § 1.1014–10 modify the rules set forth in paragraphs (a) and (c) of this section and in §§ 1.1014–2 through 1.1014–9.

(c) *Property to which section 1014 does not apply.* Section 1014 has no application to property that constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) *Applicability date.* This section applies after September 17, 2024. For rules on and before September 17, 2024, *see* § 1.1014–1 as contained in 26 CFR part 1 revised as of January 19, 2017.

■ **Par. 4.** Section 1.1014–2 is amended by revising the second sentence of paragraph (b)(2) as follows:

§ 1.1014–2 Property acquired from a decedent.

* * * * *

(b) * * *

(2) * * * Except as provided in § 1.1014–10, it is not necessary for the application of this paragraph (b)(2) that an estate tax return be required to be

filed for the estate of the decedent or that an estate tax be payable. * * *

■ **Par. 5.** Section 1.1014–10 is added to read as follows:

§ 1.1014–10 Basis of property acquired from a decedent must be consistent with property's Federal estate tax value.

(a) *Consistent basis requirement*—(1) *General rule.* The consistent basis requirement is the requirement that the initial basis in certain property be equal to or less than the property's final value as determined under paragraph (b)(1) of this section or, if no final value has yet been determined, the property's reported value for Federal estate tax purposes as described in paragraph (b)(2) of this section. The property subject to the consistent basis requirement is referred to in this section as consistent basis property and is described in paragraph (c)(1) of this section.

(2) *Initial basis in consistent basis property and effect of basis adjustments.* The initial basis in consistent basis property is the final value of the property, as determined under paragraph (b)(1) of this section, and, until the final value of this property is determined, the property's initial basis is the reported value, as described in paragraph (b)(2) of this section. The initial basis in consistent basis property may be adjusted pursuant to the operation of section 1014 or other provisions of the Internal Revenue Code (Code) governing basis, as applicable, and those adjustments will not violate the consistent basis requirement in paragraph (a)(1) of this section. For example, the initial basis in consistent basis property may be adjusted for gain recognized by the estate upon distribution of the property and for post-death capital improvements and depreciation. It also may be adjusted in the manner provided in section 1014(d) in the case of DISC stock and in the manner provided under subchapter K or S of chapter 1 of the Code, respectively, in the case of an interest in a partnership or S corporation.

(3) *Duration of consistent basis requirement.* The consistent basis requirement applies as long as the initial basis in consistent basis property is related, in whole or in part, to the property's final value, as determined under paragraph (b)(1) of this section, or, if applicable, the property's reported value, as determined under paragraph (b)(2) of this section. Therefore, regardless of the number of successive owners, the consistent basis requirement continues to apply until the entire property is sold, exchanged, or

otherwise disposed of in one or more transactions that result in a recognition event for income tax purposes (whether or not resulting in a gain or loss) or until the entire property becomes includible in another decedent's gross estate. The consistent basis requirement applies whenever there is a taxable event with respect to the property, such as, but not limited to, a sale or exchange, depreciation, or amortization of the property. The expiration of the period of limitations on assessment for an income tax return that uses an incorrect basis in reporting a taxable event with respect to consistent basis property has no effect on the duty to determine basis under the rules of this section for purposes of reporting any subsequent taxable event with respect to the property if the consistent basis requirement continues to apply under the rule of this paragraph (a)(3).

(b) *Final value and reported value*—(1) *Final value.* The final value of consistent basis property is its fair market value as finally determined for Federal estate tax purposes. That value is—

(i) The value reported on an estate tax return filed with the IRS, once the period of limitations on assessment (see section 6501) of estate tax has expired without that value having been timely adjusted by the IRS; or

(ii) The value determined or specified by the IRS that differs from the value reported on an estate tax return filed with the IRS and the value specified by the IRS for other included property, as defined in paragraph (d)(4) of this section, once the period of limitations on assessment applicable to the estate tax has expired without that value having been timely contested by the executor, as defined in paragraphs (d)(1) and (2) of this section, respectively; or

(iii) The value determined in a written agreement with the IRS, (whether entered into in the course of the administrative proceedings between the estate and the IRS or after the commencement of litigation), once that written agreement has been executed by both the executor and the IRS and is binding on all parties (including, but not limited to, the executor, the IRS, and the beneficiaries); or

(iv) The value determined by a court for the purpose of determining the estate tax liability of the estate, as defined in paragraph (d)(3) of this section, once the court's determination no longer can be appealed to any court.

(2) *Reported value if no final value yet determined*—(i) *In general.* Prior to the determination of the final value in accordance with paragraph (b)(1) of this section, a taxpayer may not claim an

initial basis in consistent basis property in excess of the property's value as reported on the Statement described in § 1.6035–1(c)(2) and required under § 1.6035–1 (as supplemented). This value is referred to in this section as the reported value. A value reported on a Statement (or a supplement to the Statement) that either reports a value from an estate tax return filed after the expiration of the period of limitations on assessment applicable to that return, or a value reported for property not reported on the estate tax return, is not a reported value for purposes of this section. See § 1.6035–1(d) regarding an executor's duty to supplement the Statement.

(ii) *Limit on reliance on Statement not reporting final value.* If the final value of consistent basis property is determined (as described in paragraph (b)(1) of this section) before the expiration of the period of limitations on assessment for a taxpayer's income tax return that reports a taxable event with regard to the property, the taxpayer's reliance on a Statement (or a supplement to the Statement) that does not report the final value of the property may result in an income tax deficiency and underpayment. See, however, section 6664 and the corresponding regulations for rules relating to waivers of penalties for certain failures due to reasonable cause.

(3) *Special rules*—(i) *Property subject to debt.* The final value or, if applicable, the reported value of property subject to recourse or non-recourse debt is determined based on the gross value of that property undiminished by the debt, regardless of whether the estate tax return reports the net value (equity of redemption value) of the property or separately reports the gross value of the property and the outstanding debt.

(ii) *Special use property.* The final value or, if applicable, the reported value of special use property with regard to which a recapture event (described in section 2032A(c)(1)) has occurred is increased as provided in section 1016(c) if the qualified heir makes the election under section 1016(c) and pays the amounts required under that section.

(c) *Consistent basis property*—(1) *Property subject to the consistent basis requirement*—(i) *In general.* Except as provided in paragraph (c)(2) of this section, consistent basis property is any property—

(A) To which section 1014(a) applies;

(B) That is included property, as defined in paragraph (d)(4) of this section, if the decedent's Federal estate tax return is filed after July 31, 2015, and any other property the basis of

which is determined, in whole or in part, by reference to the basis of included property (for example, property acquired in a like-kind exchange or an involuntary conversion); and

(C) Whose value increases the estate tax liability, as defined in paragraph (d)(3) of this section, that is payable after the application of allowable credits, as defined in paragraph (d)(5) of this section.

(ii) *Application.* If the decedent's Federal estate tax return is filed on or before July 31, 2015, no included property and no other property described in paragraph (c)(1)(i) of this section is subject to the consistent basis requirement, even if the due date of that return is after July 31, 2015, or if one or more supplements to that return are filed with the IRS after July 31, 2015. If an estate tax liability is payable after the application of allowable credits, all property described in paragraphs (c)(1)(i)(A) and (B) of this section is considered property whose value increases the estate tax liability for purposes of paragraph (c)(1)(i)(C) of this section and, therefore, is subject to the consistent basis requirement, except as provided in paragraph (c)(2) of this section. If, after the application of allowable credits, no estate tax liability is payable, no such property is subject to the consistent basis requirement.

(2) *Property excepted from or not subject to the consistent basis requirement.* Notwithstanding paragraph (c)(1) of this section, the following property either is excepted from or is not subject to the consistent basis requirement—

(i) United States dollars (as defined in paragraph (d)(6) of this section).

(ii) United States dollar-denominated demand deposits.

(iii) Certificates of deposit denominated in United States dollars.

(iv) Cash collateral denominated in United States dollars held by a third party to secure a liability (such as a deposit of purchase money or a security deposit).

(v) Shares of a registered investment company priced in United States dollars that is a money market fund under Rule 2a-7 under the Investment Company Act of 1940 (17 CFR 270.2).

(vi) Life insurance proceeds on the life of the decedent payable in a lump sum in United States dollars.

(vii) Federal, State, and local tax refunds and other refunds payable entirely in United States dollars.

(viii) Notes that are forgiven in full by the decedent upon death, whether or not denominated in United States dollars.

(ix) Household and personal effects for which an appraisal is not required under § 20.2031-6(b) of this chapter.

(x) Property the initial basis of which is not in any way determined with regard to or derived from the property's final value as determined under paragraph (b)(1) of this section or its reported value as determined under paragraph (b)(2) of this section, if applicable. Such property includes but is not limited to—

(A) Annuity contracts subject to section 72 and amounts received as an annuity subject to section 72;

(B) An interest in property that consists entirely of the right to receive an item of income in respect of a decedent as defined in section 691;

(C) Amounts received under installment obligations arising from a transaction for which the installment method for determining gain under section 453 applies;

(D) Appreciated property described in section 1014(e) that is acquired by the decedent within 1 year of death;

(E) Stock of a passive foreign investment company subject to section 1296(i), but only if the basis of such stock is the adjusted basis in the hands of the decedent immediately before the decedent's death; and

(F) Interests in and distributions from retirement plans and deferred compensation plans, including individual retirement arrangements as defined in sections 408 and 408A, that are expressed entirely in United States dollars.

(xi) Any interest in property that qualified for an estate tax marital deduction under section 2056, 2056A, or 2106(a)(3) for which such a deduction was properly claimed, and/or any interest in property that qualified for an estate tax charitable deduction under section 2055 or 2106(a)(2) for which such a deduction was properly claimed, provided that the value of the decedent's entire interest in the included property is wholly deductible and equal to the total amount qualifying for those deductions.

(xii) Property that represents the surviving spouse's one-half share of community property to which section 1014(b)(6) applies, regardless of whether this property is included property as defined in paragraph (d)(4) of this section.

(xiii) Property the basis of which is adjusted in a manner similar to section 1014(a) on the occurrence of a taxable termination that occurs on the death of a trust beneficiary pursuant to section 2654(a)(2) (to the extent the property is not then includible in the gross estate of any person).

(xiv) Any other property that is not described in paragraph (c)(1)(i) of this section or that is identified as excepted property in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(d) *Definitions.* The following definitions apply for purposes of this section—

(1) *Contested.* The term *contested* means to put at issue the value of property in a written communication to the IRS that identifies the specific property, states that the executor does not accept as correct the value of that property as determined or specified by the IRS, and provides the executor's claimed value for that property as determined in accordance with the requirements of section 2031, the corresponding regulations, and other applicable guidance. An issue cannot be contested by a general statement or written communication that does not include each of these specified elements.

(2) *Executor.* The term *executor* includes any person described in section 2203, as expanded to include all persons required under section 6018(b) to file an estate tax return.

(3) *Estate tax liability.* The term *estate tax liability* means the amount of tax imposed under chapter 11 of the Code (chapter 11).

(4) *Included property.* The term *included property* means property the value of which is included in the value of the decedent's gross estate as defined in section 2031 or 2103. Generally, this refers to property whose value is reported on an estate tax return, but it also refers to property whose value otherwise is included in the total value of the gross estate (for example, during examination by the IRS) so that a final value is or will be determined for that property under chapter 11. However, solely for purposes of this section, included property does not refer to unreported property whose value is not reported on an estate tax return and whose value is not otherwise included in the value of the decedent's gross estate as finally determined for Federal estate tax purposes.

(5) *Allowable credits.* The term *allowable credits* includes any credit against the estate tax liability allowable by any section of the Code or by reason of any treaty obligation of the United States, provided the estate qualifies for and properly claims the credit by complying with all applicable rules for claiming the credit. For instance, the prorated unified credit under section 2102(b)(3) is an allowable credit for qualifying estates if the estate files all

necessary forms or statements required by the IRS to claim that credit.

(6) *United States dollars.* The term *United States dollars* means the official currency of the United States. The term *United States dollars* includes physical bills and coins for which the value of each bill or coin is equivalent to the face amount of that bill or coin. This definition does not include other physical United States bills or coins with numismatic value because these bills and coins typically do not have a value equal to their face value.

(e) *Examples.* The following examples illustrate the application of this section. In each case, the decedent D was a citizen of the United States, the estate does not elect the alternate valuation method under section 2032, and an estate tax liability is payable after the application of all allowable credits.

(1) *Example 1—(i) Final value determined by value on estate tax return.* At D's death, D owned (among other assets) a private residence not subject to any debt. D's sole beneficiary is D's child C. The value of the residence is reported on the estate tax return at \$300,000. The IRS accepts the return as filed and the period of limitations on assessment of estate tax expires. For purposes of the consistent basis requirement applicable to C, the final value of D's residence is \$300,000, and therefore, C's initial basis in the residence is \$300,000. See paragraphs (a)(2) and (b)(1)(i) of this section.

(ii) *Adjustment of initial basis pursuant to other Code provisions.* Several years later, C adds a master suite to the private residence at a cost of \$45,000. Pursuant to section 1016(a), C's basis in the residence is increased by \$45,000 to \$345,000. Subsequently, C sells the residence to an unrelated third party for \$450,000. C claims a basis in the residence of \$345,000 and reports a gain of \$105,000 (\$450,000 less \$345,000). C has complied with the consistent basis requirement, and C's adjustment to C's initial basis does not violate the consistent basis requirement. See paragraphs (a)(1) and (2) of this section.

(2) *Example 2—(i) Final value determined on examination.* The facts are the same as in paragraph (e)(1)(i) of this section (*Example 1*) except that, on examination, the IRS adjusts the value of the residence to \$290,000 and that value is not contested before the period of limitations on assessment of estate tax expires. For purposes of the consistent basis requirement applicable to C, the final value of the residence is \$290,000, and therefore, C's initial basis in the residence, before taking into account C's subsequent renovations, is

\$290,000. See paragraphs (a)(2) and (b)(1)(ii) of this section.

(ii) *Reported value if no final value yet determined and reliance on Statement required under § 1.6035-1.* Prior to the determination of final value, C sells the residence for \$375,000. C reports a gain of \$75,000 on C's income tax return, relying on the reported value in a Statement required under § 1.6035-1 and claiming an initial basis of \$300,000. C has complied with the consistent basis requirement because C did not claim an initial basis in the residence in excess of its reported value before the final value was determined. However, because C claimed an initial basis in the residence that exceeds the final value, C may have an income tax deficiency and underpayment for the year of the sale if the applicable period of limitations on assessment for C's income tax return has not expired when the final value is determined. See paragraphs (b)(2)(i) and (ii) of this section.

(3) *Example 3—(i) Final value determined by agreement.* At D's death, D owned 50% of Partnership P, whose sole asset was a rental building with a fair market value of \$10 million subject to non-recourse debt of \$2 million. D's sole beneficiary is D's child C. The value of D's interest in Partnership P is reported on the estate tax return at \$4 million (50% of (\$10 million less \$2 million)). On examination, the IRS timely adjusts the value of the partnership interest to \$5.25 million and the executor of D's estate timely contests that value before the period of limitations on assessment of estate tax expires. Subsequently, the IRS and the executor of D's estate enter into a settlement agreement that provides that the value of D's interest in Partnership P for purposes of the estate tax is \$4.5 million. For purposes of the consistent basis requirement applicable to C, the final value of the partnership interest is \$4.5 million, and therefore, C's initial basis in the partnership interest is \$4.5 million. See paragraphs (a)(2) and (b)(1)(iii) of this section.

(ii) *Adjustment of initial basis pursuant to other Code provisions.* C's share of Partnership P's liabilities at the date of D's death is \$1 million. Under section 742 of the Internal Revenue Code and § 1.742-1 of this part, C's basis in the partnership interest is \$5.5 million (\$4.5 million initial basis plus C's \$1 million share of Partnership P's debt). C later sells the partnership interest for \$5 million at a time when C's basis has not changed and C's share of the debt remains \$1 million. Under section 752(d), C's amount realized on the sale includes \$1 million for the

reduction in C's share of partnership liabilities. Therefore, C's total amount realized is \$6 million. C reports taxable gain of \$0.5 million (\$6 million amount realized less \$5.5 million basis). C has complied with the consistent basis requirement because C did not claim an initial basis in the partnership interest that exceeds the final value of the interest, as determined under paragraph (b)(1) of this section, and C's adjustment of the initial basis in the partnership interest as reported does not violate the consistent basis requirement. See paragraphs (a)(1) and (2) of this section.

(4) *Example 4—(i) Final value determined by court decision.* At D's death, D owned (among other assets) a rental property. D's sole beneficiary is D's child C. The value of the rental property is reported on the estate tax return at \$1 million. On examination, the IRS determines the value of the rental property to be \$1.5 million. A court subsequently determines that the fair market value of the rental property for purposes of the estate tax is \$1.3 million and the court's decision becomes final. For purposes of the consistent basis requirement, the final value of the rental property is \$1.3 million, and therefore, C's initial basis is \$1.3 million. See paragraphs (a)(2) and (b)(1)(iv) of this section.

(ii) *Reliance on Statement required under § 1.6035-1 and duration of consistent basis requirement.* After the estate tax return is filed and before the final value is determined, C receives a Statement required under § 1.6035-1 showing a reported value of \$1 million for the rental property. C claims a depreciation deduction on the first income tax return C files after acquiring the property, relying on the reported value in the Statement required under § 1.6035-1. C has complied with the consistent basis requirement on that return because C did not claim an initial basis in the rental property in excess of its reported value before the final value was determined. C may claim a credit or refund of income tax that may result from the increased depreciation deduction based on the final value of the rental property, but only if the period of limitations for a claim for a credit or refund of income tax for that year has not expired. C must use the final value of \$1.3 million to determine C's unadjusted basis in the rental property for all open taxable years. In this case and pursuant to section 1016(a)(2), C's adjusted basis is determined by reducing the rental property's final value of \$1.3 million by the greater of the depreciation deductions allowed or allowable based on the final value of \$1.3 million for all

prior tax years (open and closed). See paragraphs (a)(3), (b)(2)(i) and (ii) of this section.

(5) *Example 5—Final value for property subject to debt.* At D's death, D's gross estate includes a yacht valued at \$750,000, subject to \$150,000 non-recourse debt. D's sole beneficiary is D's child C. Pursuant to the rule in § 20.2053-7 of this chapter, the executor of D's estate reports the \$600,000 net value of the yacht on the estate tax return (\$750,000 less \$150,000 debt) and claims no other deduction for the debt. The IRS accepts the return as filed and the period of limitations on assessment of estate tax expires. For purposes of the consistent basis requirement applicable to C, the final value of the yacht is \$750,000, and therefore, C's initial basis in the yacht is \$750,000. See paragraph (b)(3) of this section.

(6) *Example 6—Included property subject to the consistent basis requirement.* After exercising due diligence to discover estate assets, the executor of D's estate reports the value of all known property includible in D's gross estate on a timely filed estate tax return and pays the estate tax liability. During examination of the return, the IRS becomes aware of a piece of artwork in the possession of D's child C, the value of which is includible in D's gross estate but is not reported on the estate tax return. The value of the artwork for Federal estate tax purposes is \$500,000. Pursuant to the examination, the IRS includes the value of the artwork in the value of D's gross estate, which causes an increase in D's estate tax liability. Neither the inclusion of the artwork in D's gross estate nor the value at which the artwork is included in D's estate is contested by the executor of D's estate before the period of limitation on assessment of estate tax expires. The artwork is subject to the consistent basis requirement and the final value of the artwork is \$500,000. Therefore, C's initial basis in the artwork is \$500,000. See paragraphs (a)(2) and (c)(1)(i) of this section.

(7) *Example 7—(i) Partially deductible property subject to the consistent basis requirement.* Pursuant to a bequest in D's will, Trust is established and funded with certain property, the value of which is includible in the gross estate under section 2031. Trust is a charitable remainder annuity trust described in section 664(d)(1). Trust provides that, in each taxable year during the lifetime of D's surviving child C, the trustee must pay to C an annuity of 5% of the initial net fair market value of all property passing to Trust as finally determined for Federal estate tax purposes. Upon the death of C, the trustee must

distribute all of the then principal and income of Trust to organizations described in sections 170(c), 2055(a), and 2522(a) of the Code as the trustee selects, in the trustee's sole discretion. Although the executor of D's estate properly claims an estate tax charitable deduction under section 2055(e)(2)(A) for the value of the remainder interest in Trust, D's estate has an estate tax liability after application of all allowable credits. The property passing to Trust is subject to the consistent basis requirement because the value of the property is included in D's gross estate, an estate tax liability is payable after the application of all allowable credits, and the property is not described in paragraph (c)(2) of this section (in particular, the property is not wholly deductible property within the meaning of paragraph (c)(2)(xi) of this section).

(ii) *Wholly deductible property not subject to the consistent basis requirement.* The facts are the same as in paragraph (e)(7)(i) of this section (*Example 7*), except that the sole annuity beneficiary of Trust is D's surviving spouse S, and the executor of D's estate properly claims a deduction under section 2056(b)(8) for the value of S's annuity interest. Because the value of D's entire interest in the property passing to Trust qualified for either a charitable deduction under section 2055(e)(2) or a marital deduction under section 2056(b)(8), none of the property passing to Trust will be subject to the consistent basis requirement. See paragraph (c)(2)(xi) of this section.

(iii) *Property not wholly deductible property if the sum of marital and charitable deductions allowed for that property is less than the value of the decedent's entire interest in the property.* At the time of D's death, D owned 80 shares of voting stock in a closely-held corporation that has 100 shares of voting stock outstanding. D's will directed the executor of D's estate to distribute 40 shares of D's stock to a marital trust and 40 shares of D's stock to a charitable trust. D's executor included the value of D's 80 shares of stock in D's gross estate at \$8,000,000 for purposes of the estate tax. Because of discounts applicable in valuing each of the two blocks of only 40 shares of the stock, D's executor correctly claimed a charitable deduction under section 2055(e)(2) of only \$3,000,000, and correctly claimed a marital deduction under section 2056(b)(7) of only \$3,000,000. D's executor determined that an estate tax was due on D's estate after the application of all allowable credits. The IRS accepted the return as filed and the period of limitations on assessment of estate tax expired. The 40

shares of stock owned by charitable trust and the 40 shares of stock owned by marital trust are not wholly deductible property within the meaning of paragraph (c)(2)(xi) of this section and are subject to the consistent basis requirement.

(f) *Applicability date.* This section applies to property described in paragraph (c)(1) of this section that is acquired from a decedent or by reason of the death of a decedent if the decedent's Federal estate tax return is filed after September 17, 2024.

■ **Par. 6.** Add § 1.6035-0 to read as follows:

§ 1.6035-0 Table of contents.

This section lists the captions contained in §§ 1.6035-1 and 1.6035-2.

§ 1.6035-1 Basis information to persons acquiring property from decedent.

(a) Overview.
(b) Applicability of section 6035 reporting requirements.

(1) In general.
(2) Executor(s) subject to section 6035 reporting requirements.

(3) Examples.
(c) Required Information Return and Statement(s).

(1) Required Information Return.
(2) Required Statement(s).
(3) Due dates.
(4) Acquiring an interest in property.
(5) Option to furnish Statement(s) prior to the acquisition of property by a beneficiary.
(6) Example.

(d) Duty to supplement.
(1) Duty to supplement to report changes to the information reported on the Information Return or Statement(s).

(2) Changes requiring supplemental reporting.

(3) Exceptions; no duty to supplement despite certain changes.

(4) Due date of supplemental reporting.

(5) Duration of duty to supplement.

(6) Examples.
(e) Property for which reporting is required.

(1) In general.
(2) Examples.
(f) Excepted property requiring only limited reporting.

(1) Excepted property.
(2) List of excepted property.
(3) United States dollars defined.
(4) Examples.
(g) Beneficiaries.
(1) In general.
(2) Required Statement to beneficiary trust.
(3) Required Statement to the holder of a split interest in property, not in trust.
(4) Reporting for a missing beneficiary.
(h) Reporting requirements applicable to trustees.

(1) Circumstances under which trustees of beneficiary trusts and other trusts are subject to reporting.

(2) Required reporting.

(3) Example.

(i) Penalties.

(j) Applicability date.

§ 1.6035–2 Transitional relief.

(a) Statements due before June 30, 2016.

(b) Applicability date.

■ **Par. 7.** Revise § 1.6305–1 to read as follows:

§ 1.6035–1 Basis information to persons acquiring property from decedent.

(a) *Overview.* This section implements the reporting requirements under section 6035 of the Internal Revenue Code (Code) applicable to executors and certain trustees. In general, the reporting requirements of this section require providing information to the IRS on the identity of persons acquiring property from a decedent and providing basis information to persons acquiring that property from the decedent. Basis information is needed by certain persons acquiring property from a decedent in order to comply with the consistent basis requirement of section 1014(f) of the Code. See § 1.1014–10 for rules applicable to the consistent basis requirement.

(b) *Applicability of section 6035 reporting requirements—(1) In general.* The reporting requirements under section 6035 of the Code apply only in the case of an estate in which the executor is required to file an estate tax return under section 6018 of the Code (determined without regard to § 20.2010–2(a)(1) of this chapter) (required estate tax return) and the executor files that return after July 31, 2015. The requirements do not apply in the case of an estate whose required estate tax return is filed on or before July 31, 2015, even if the due date of the return is after July 31, 2015, or if one or more supplements to that return are filed with the IRS after July 31, 2015. Whether an estate tax return is a required estate tax return depends on the relevant factors identified in section 6018 and the corresponding regulations, including the date of death value of property includible in the decedent's gross estate, the amount of adjusted taxable gifts, and the applicable filing threshold. An election under section 2032 or 2032A of the Code to determine the value of the gross estate in accordance with those respective provisions is not relevant to whether an executor is required to file an estate tax return under section 6018. If an estate tax return is not required to be filed under section 6018 based on the relevant factors identified in section 6018, then an estate tax return filed for another purpose (such as to make a portability election under section 2010(c)(5) of the Code, an allocation or election under section 2632 of the Code with regard to a decedent's generation-

skipping transfer tax exemption, or a protective filing to avoid a penalty or satisfy a State law requirement) is not a required estate tax return for purposes of this section.

(2) *Executor(s) subject to section 6035 reporting requirements.* For purposes of this section, the term *executor* has the same meaning as in section 2203 of the Code, as expanded to include all persons required under section 6018(b) to file an estate tax return. Thus, more than one person may be subject to the reporting requirements for the same decedent's estate. If one executor is unable to file a complete estate tax return (for example, if the executor has insufficient information about property in the decedent's gross estate that is not in the possession of that executor), each person required to file a return is subject to the reporting requirements of this section only with regard to the property reported (or required to be reported) on the estate tax return required to be filed by that person. Similarly, if no executor is appointed by a court, each person in actual or constructive possession of any property of the decedent is an executor for purposes of this section and is subject to the reporting requirements of this section, but only with regard to the property reported or required to be reported on the estate tax return required to be filed by that executor under section 6018(b).

(3) *Examples.* The following examples, in which the decedent D was a United States citizen at the time of the decedent's death, illustrates the application of this paragraph (b).

(i) *Example 1—Executor required to file a return under section 6018.* The value at death of property includible in D's gross estate exceeds the basic exclusion amount in effect for the year of D's death under section 2010(c). On the timely-filed estate tax return, D's executor makes a valid alternate valuation election under section 2032 to value the property of D's gross estate as of a date subsequent to the date of death. As a result, the value of property includible in D's gross estate is decreased to a value that is less than the basic exclusion amount in effect for the year of D's death. Because D's executor is required to file an estate tax return under section 6018, D's executor also is subject to the reporting requirements of section 6035. This is true even though no estate tax liability was incurred, and the requirements of section 1014(f) do not apply to any property includible in D's gross estate. See § 1.1014–10(c)(1).

(ii) *Example 2—Executor not required to file a return under section 6018.* The value at death of property includible in D's gross estate does not exceed the

basic exclusion amount in effect for the year of D's death under section 2010(c) of the Code. In accordance with the terms of D's will, D's executor distributes D's entire estate to D's only child. D's executor files an estate tax return solely for the purpose of making a portability election under section 2010(c)(5). Because D's executor is not required to file an estate tax return under section 6018, D's executor is not subject to the reporting requirements of section 6035.

(iii) *Example 3—No executor appointed.* The value at death of property includible in D's gross estate exceeds the basic exclusion amount in effect for the year of D's death under section 2010(c) and consists entirely of D's interests in Property A and Property B that D owned with Nephew A and Nephew B, respectively, as joint tenants with rights of survivorship. Pursuant to local law, Nephew A becomes the sole owner of Property A and Nephew B becomes the sole owner of Property B upon D's death. No executor or administrator is appointed, qualified, or acting within the United States for D's estate on the due date of D's estate tax return. Because Nephew A has actual or constructive possession of Property A, Nephew A is an executor described in paragraph (b)(2) of this section with regard to D's interest in Property A. Because Nephew A is required to file an estate tax return under section 6018 with regard to D's interest in Property A, Nephew A also is subject to the reporting requirements of section 6035 with respect to Property A. Similarly, because Nephew B has actual or constructive possession of Property B on the due date of D's estate tax return, Nephew B is an executor described in paragraph (b)(2) of this section with regard to D's interest in Property B. Because Nephew B is required to file an estate tax return under section 6018 with regard to D's interest in Property B, Nephew B also is subject to the reporting requirements of section 6035 with respect to Property B.

(iv) *Example 4—Executor unable to make a complete return.* The value at death of property includible in D's gross estate exceeds the basic exclusion amount in effect for the year of D's death under section 2010(c). E is appointed the executor of D's estate. During the administration of D's estate, E discovers that D has made transfers each year for the past ten years to T as trustee of Trust. E contacts T, but T refuses to provide E with any information regarding Trust. E timely files D's estate tax return reporting the value of all of the property in D's gross estate except Trust. Pursuant to

§ 20.6018–2 of this chapter, E includes with the return a statement that gives T's name and contact information and the date and amount of each transfer from D to T as trustee of Trust, which is all the information E has about Trust. The IRS provides notice to T of T's obligation to make D's estate return as to Trust. Because E is required to file an estate tax return under section 6018, E is subject to the reporting requirements of section 6035 as to the property reported on the estate tax return filed by E. Because T is required to file an estate tax return under section 6018, T is subject to the reporting requirements of section 6035 as to Trust.

(c) *Required Information Return and Statement(s)*—(1) *Required Information Return*. An executor required to file an estate tax return under section 6018 must file with the IRS an Information Return by the date required under paragraph (c)(3) of this section. The term *Information Return* refers to the Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*, and all required attachments. Required attachments include a copy of each Statement described in paragraph (c)(2) of this section (if any) required to be furnished to a beneficiary who acquires property within the meaning of paragraph (c)(4) of this section on or before the due date of the estate tax return or, if earlier, the date on which the estate tax return is filed with the IRS. Required attachments also include a copy of each Statement (if any) furnished pursuant to paragraph (c)(5) of this section before the filing of the Information Return. The term *Information Return* also refers to any successor form or procedure designated by the IRS for this purpose. The Information Return must identify each beneficiary who has acquired or will acquire property subject to reporting (under paragraph (e) of this section), as well as other information prescribed by the Information Return and the instructions for that form. For the duty to supplement the Information Return in the event such property is acquired by a beneficiary after the filing of the estate tax return, see paragraph (c)(3)(ii) of this section. For the duty to supplement the Information Return in the event of a change to the information required to be reported, see paragraph (d) of this section.

(2) *Required Statement(s)*. An executor required to file an estate tax return under section 6018 also must furnish a Statement to each beneficiary who acquires property subject to reporting under paragraph (e) of this section. For purposes of this section, the term *Statement* refers to the payee

statement described as Schedule A of the Information Return to be furnished to a beneficiary, or any successor form, schedule, or procedure designated by the IRS for this purpose. The Statement furnished to a beneficiary must identify that beneficiary's acquired property and its value and other information prescribed by the Statement and the instructions for that form. For each property reported on a Statement, the value the executor reports on that Statement is the value of the property as reported on the estate tax return filed with the IRS. Generally, this is the value of the property on the date of the decedent's death, except in the case of an election in which the value is determined under section 2032 or 2032A, in which case it is the value determined under the applicable provision. If different interests in the same property pass from the decedent to one or more income beneficiaries or life tenants and remaindermen, the value to be reported is the value of the entire property and each recipient will be responsible for identifying his or her respective share of uniform basis. For the duty to supplement the Statement in the event of a change to the information required to be reported, including a change in the identified value of property reported on a Statement, see paragraph (d) of this section.

(3) *Due dates*—(i) *General rule*. Except as provided in paragraphs (c)(3)(ii) and (iii) of this section and in § 1.6035–2, the executor must file the Information Return with the IRS on or before the due date specified in this paragraph (c)(3)(i). In addition, each Statement, a copy of which is required to be attached to the Information Return, must be furnished to the named beneficiary on or before this same due date. The Information Return must be filed, and each such Statement (if any) must be furnished to its named beneficiary, on or before the earlier of—

(A) The date that is 30 days after the due date of the estate tax return required under section 6018 (including extensions, if any); or

(B) The date that is 30 days after the date on which that estate tax return is filed with the IRS.

(ii) *Due date and applicable rules if property is acquired subsequently by beneficiary*. If a beneficiary acquires property subject to reporting after the due date of the estate tax return (or the earlier filing of the Information Return), the executor must furnish a Statement to that beneficiary with regard to that acquired property on or before January 31 of the year following the beneficiary's acquisition of that property. By that same January 31, the

executor also must attach a copy of the Statement to a supplement to the Information Return (a supplemental Information Return) and must file the supplemental Information Return with the IRS. The supplemental Information Return must include a copy of each Statement required to be furnished for that year pursuant to this paragraph (c)(3)(ii), as well as a copy of each Statement (if any) furnished in accordance with paragraph (c)(5) of this section that has not already been filed with the IRS as an attachment to the Information Return or a supplement to the Information Return. The requirements of this paragraph (c)(3)(ii) do not apply if the property already has been reported on a Statement furnished pursuant to paragraph (c)(5) of this section. See this paragraph (c)(3) and paragraph (d)(4) of this section for the due date of other required supplements to this reporting.

(iii) *Transition rule*. If the due date of an estate tax return required to be filed by section 6018 is on or before July 31, 2015, but the executor does not file the estate tax return with the IRS until after July 31, 2015, then the Information Return and all required Statements are due on or before the date that is 30 days after the date on which the estate tax return is filed, except as provided in § 1.6035–2.

(4) *Acquiring an interest in property*. For purposes of this section, the term *acquired property* refers to property subject to reporting under paragraph (e) of this section that a beneficiary acquires. A beneficiary acquires such property when, under local law, title vests in the beneficiary or when the beneficiary otherwise has sufficient control over or connection with the property that the beneficiary is able to take action related to the property for which basis is relevant for Federal income tax purposes (such as, for example, to sell or depreciate the property). In many cases, a beneficiary's acquisition of property occurs upon an executor's or trustee's distribution of the property. For property passing by contract or by operation of law, the beneficiary's acquisition of that property generally occurs automatically upon the death of the decedent.

(5) *Option to furnish Statement(s) prior to the acquisition of property by a beneficiary*. An executor may satisfy the requirement in paragraph (c)(2) of this section to furnish a Statement to a beneficiary by furnishing the Statement to the beneficiary prior to the beneficiary's acquisition of the property subject to reporting under paragraph (e) of this section, provided that the executor has reason to believe that the

beneficiary will acquire that property. The Statement furnished to such a beneficiary must identify the property the beneficiary is expected to acquire as well as the value of that property and other information prescribed by the Statement and the instructions for that form (and must include information relating to other property actually acquired by such beneficiary as may be required under paragraph (c)(2) of this section). If, after satisfying the requirements of this paragraph (c)(5), the property is acquired by a different beneficiary, the executor must update the beneficiary information in the Information Return and furnish a Statement to that beneficiary pursuant to the duty to supplement to report a change in beneficiary information as described in paragraph (d)(2)(i) of this section. The executor additionally is subject to the duty to supplement to report other changes to the information required to be reported as identified in paragraph (d) of this section.

(6) *Example.* The following example illustrates the application of this paragraph (c).

(i) The decedent D was a United States citizen at the time of D's death and the executor of D's estate E is required to file an estate tax return under section 6018. The terms of D's will provide for D's entire estate to be distributed to a marital trust. Prior to timely filing the estate tax return for D's estate, E funded the marital trust with a portion of the property, the value of which is included in D's gross estate. Under paragraph (c)(4) of this section, the marital trust has acquired this property upon the funding of the trust by E. Under paragraphs (c)(1) and (c)(3)(i) of this section, within 30 days of filing the estate tax return, E must file with the IRS the Information Return identifying the marital trust as the beneficiary (as well as other information prescribed by the Information Return or instructions) and must include with the Information Return all required attachments. Under paragraphs (c)(2) and (c)(3)(i) of this section, by the same date, E must furnish to the marital trust the Statement identifying the portion of the property distributed to the marital trust and its estate tax value (as well as any other information prescribed by the Statement or instructions). A copy of the Statement is a required attachment to be included with the Information Return. Pursuant to paragraph (c)(5) of this section, E may choose to expand the property identified on the Statement to also include the property the marital trust is expected to acquire subsequently. If E so chooses, the Statement to be furnished to the marital

trust will identify all such property and its value at the date of death and, except in the case of any changes to the information required to be reported, no further Statement will be required at the time of the completion of the funding of the trust.

(ii) However, if E chooses not to expand the reporting to property not yet acquired by the marital trust, then, once the marital trust has acquired additional property, E is subject to further reporting. Under paragraph (c)(3)(ii) of this section, in each year that E distributes additional property to the marital trust, E must furnish, by January 31 of the following year, a Statement to the marital trust identifying all of the property the marital trust has acquired from D's estate that year and the property's estate tax value (as well as any other information prescribed by the Statement or instructions). By the same date, E must file with the IRS a supplemental Information Return and attach a copy of that Statement as well as any other required attachments.

(d) *Duty to supplement*—(1) *Duty to supplement to report changes to the information reported on the Information Return or Statement(s).* An executor to whom the reporting requirements of this section apply must file a supplemental Information Return with the IRS and furnish a Statement or supplemental Statement to each affected beneficiary if a change to the information required to be reported on the Information Return or Statement (or supplement to either) causes the information as reported to be incorrect or incomplete. The executor must file the supplemental Information Return with the IRS, including copies of each Statement or supplemental Statement furnished to affected beneficiaries, and must furnish a Statement or supplemental Statement to each affected beneficiary, by the due date described in paragraph (d)(4) of this section.

(2) *Changes requiring supplement.* This paragraph (d)(2) provides a nonexhaustive list of changes that require supplemental reporting under paragraph (d)(1) of this section.

(i) *Change in beneficiary information.* The receipt, discovery, or acquisition by the executor of information that changes the beneficiary to whom property is to be distributed (pursuant to a death, disclaimer, bankruptcy, or otherwise), or corrects or completes other beneficiary information originally reported, will give rise to a duty to supplement.

(ii) *Change in the identified value of property.* The supplementing of an estate tax return to report a corrected estate tax value of property that was

previously reported on an estate tax return and a Statement will give rise to a duty to supplement. In addition, a final determination of value of property for Federal estate tax purposes (within the meaning of § 1.1014–10(b)(1)) that differs from the value provided on a Statement or supplement to a Statement will give rise to a duty to supplement.

(iii) *Change or addition of property subject to reporting.* The supplementing of an estate tax return to report the estate tax value of property subject to reporting under paragraph (e) of this section, if that property and/or its value previously was not reported on an estate tax return or supplement to the estate tax return, will give rise to a duty to supplement. A duty to supplement also will arise if such property or its value that previously was not reported on an estate tax return or supplement to the estate tax return is included in the decedent's gross estate pursuant to an examination by the IRS or otherwise.

(iv) *Change in property to be acquired by beneficiary.* A duty to supplement will arise if an executor furnishes a Statement to a beneficiary prior to the beneficiary's acquisition of property pursuant to paragraph (c)(5) of this section and the beneficiary ultimately acquires property different from the property identified on that Statement. A beneficiary's acquisition of different property may occur for any reason, including an executor's receipt of different property in a transaction in which the basis of the new property received by the executor is determined, in whole or in part, by reference to the final value of property acquired from or as a result of the death of the decedent (for example, as the result of a like-kind exchange under section 1031 or an involuntary conversion).

(3) *Exceptions; no duty to supplement despite certain changes.* Notwithstanding paragraph (d)(2) of this section, no supplemental reporting under this section is required for:

(i) Inconsequential errors or omissions within the meaning of § 301.6722–1(b) of this chapter;

(ii) Changes resulting from an event that triggers an additional estate tax under section 2032A, including changes in value in the event of a beneficiary election under section 1016(c) of the Code;

(iii) Adjustments to the basis of property pursuant to sections of the Code other than section 1014(f); and

(iv) Any other change that is identified as requiring no supplemental reporting under this section in published guidance in the **Federal Register** or in the Internal Revenue

Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(4) *Due date of supplemental reporting.* The supplemental reporting required by this paragraph (d) must be filed with the IRS and furnished to each affected beneficiary on or before 30 days after the date on which information becomes available to the executor from which the executor can conclude that a change to the information provided on the Information Return or Statement (or supplement to either) requires supplemental reporting. For changes occurring as a result of supplementing the estate tax return, the date on which the information becomes available to the executor is deemed to be the filing date of the supplemental information. Therefore, for changes occurring as a result of supplementing the estate tax return, the due date of the supplemental reporting required by this paragraph (d) is 30 days after the filing date of the supplemental information. For changes occurring as a result of a determination of final value, the date on which the information becomes available to the executor is deemed to be the date a value becomes the final value under § 1.1014–10(b)(1). Therefore, for changes occurring as a result of a determination of final value, the due date of the supplemental reporting required by this paragraph (d) is 30 days after the date a value becomes the final value under § 1.1014–10(b)(1). However, with regard to property that has not been acquired by a beneficiary on or before the due date described in this paragraph (d)(4) and for which a Statement was not provided to the beneficiary pursuant to paragraph (c)(5) of this section, the due date may be delayed until the due date described in paragraph (c)(3)(ii) of this section.

(5) *Duration of duty to supplement.* An executor's duty to supplement as described in this section continues to apply until a final determination of value for Federal estate tax purposes (a final value within the meaning of § 1.1014–10(b)(1)) is determined for all property subject to reporting (under paragraph (e) of this section) or, if later, until such property has been acquired by a beneficiary. Therefore, the executor's final supplemental reporting is the reporting to the IRS and the furnishing of Statements to beneficiaries with regard to the last to occur of these two events, assuming that either event would create a change requiring supplemental reporting.

(6) *Examples.* The following examples illustrate the application of this paragraph (d). In each case, the decedent D was a U.S. citizen and D's

executor E was required under section 6018 to file an estate tax return.

(i) *Example 1—Change in identified value of property.* D's estate includes stock in a closely-held corporation. E distributes the stock to a beneficiary B of the estate before the due date of the estate tax return. D's executor reports the value of the stock at \$14 million on D's estate tax return and on the Statement furnished to B. On examination of D's estate tax return, the IRS adjusts the value of the closely-held stock to \$18 million. A court subsequently determines that the fair market value of the closely-held stock for Federal estate tax purposes is \$17 million and the court's decision becomes final on June 15th. On or before July 15th of the same year, E must furnish a supplemental Statement to B showing the final value of \$17 million for the closely-held stock, and must attach a copy of that supplemental Statement to a supplemental Information Return and file it with the IRS.

(ii) *Example 2—Duration of the duty to supplement.* D's gross estate includes stock in closely-held corporation X, stock in closely-held corporation Y, and cash. D's will directs E to distribute 50% of the value of D's estate to A and 50% to B in any manner to which A and B agree. A and B agree that A will take the stock in corporation X and B will take stock in corporation Y and they will divide the cash in such amounts as to cause each to take an equal share of the value D's estate. E timely files D's estate tax return and furnishes a Statement to A and to B pursuant to paragraph (c)(5) of this section. The IRS accepts the return as filed and the period of limitations on assessment of estate tax expires. Thereafter, A and B agree to revise their agreement. E distributes the stock in corporation X to B and the stock in corporation Y to A in accordance with a revised agreement between A and B. E's final supplemental reporting is the filing of a supplemental Information Return and furnishing of a supplemental Statement to A describing the shares and value of stock distributed to A and a supplemental Statement to B describing the shares and value of stock distributed to B.

(e) *Property for which reporting is required—(1) In general.* Except for excepted property subject to only limited reporting as described in paragraph (f) of this section, the property subject to reporting under this section is *included property* and any other property the basis of which is determined, in whole or in part, by reference to the basis of the included property (for example, property

acquired in a like-kind exchange or an involuntary conversion). For purposes of this section, *included property* is property the value of which is included in the value of the decedent's gross estate as defined in section 2031 or 2103. Generally, included property refers to property whose value is reported on an estate tax return, but it also refers to property whose value otherwise is included in the total value of the gross estate (for example, during examination by the IRS). Thus, included property includes property that qualified, in whole or in part, for an estate tax marital deduction under section 2056, 2056A, or 2106(a)(3) or for an estate tax charitable deduction under section 2055 or 2106(a)(2). It further includes property included in the decedent's gross estate that is distributed to a surviving spouse in satisfaction of that surviving spouse's interest in community property not included in the gross estate that the executor has distributed to a non-spouse pursuant to State law properly applied. However, included property does not include property whose value is not reported on an estate tax return and whose value is not otherwise included in the value of the decedent's gross estate, such as the property of a deceased nonresident noncitizen that is not subject to United States estate tax, and the surviving spouse's share of community property described in section 1014(b)(6).

(2) *Examples.* The following examples illustrate the application of this paragraph (e). In each case, the decedent D was a U.S. citizen and D's executor E was required under section 6018 to file an estate tax return.

(i) *Example 1—Included property.* Pursuant to the terms of D's will, a trust is established and funded with property, the value of which is includible in D's gross estate under section 2031. The trust is a charitable remainder annuity trust described in section 664(d)(1). The terms of the trust provide that, in each taxable year during the lifetime of D's surviving spouse S, the trustee must pay to S an annuity of 5% of the initial net fair market value of all property passing to the trust as finally determined for Federal estate tax purposes. Upon the death of S, the trustee must distribute all of the then-principal and income of the trust to organizations described in sections 170(c), 2055(a) and 2522(a) as the trustee selects, in the trustee's sole discretion. The property used to fund the trust is included property and is subject to the reporting requirements of this section. This is true whether or not the requirements of section 1014(f)

apply to the property transferred to the trust. *See* § 1.1014–10(d)(4).

(ii) *Example 2—Property the basis of which is determined by reference to the basis of included property.* D's gross estate includes the value of Property A. Before the due date for filing the estate tax return, E exchanges Property A for Property B in a like-kind exchange pursuant to section 1031, for which D's estate recognizes no gain or loss. Property B is property subject to reporting as prescribed in this section. With respect to Property B, the value E reports on the Statement is the value reported for Property A on the estate tax return filed with the IRS.

(f) *Excepted property requiring only limited reporting—(1) Excepted property.* Certain included property that is described in paragraph (f)(2) of this section (excepted property) is subject to more limited reporting than the reporting required under paragraph (c) of this section. The requirement to file an Information Return with the IRS as described in paragraph (c)(1) of this section remains the same even if all property subject to reporting under paragraph (e) of this section is excepted property. However, the executor is not required to identify or provide any other information for excepted property on the Information Return, and the executor is not required to furnish a Statement to the beneficiary with regard to that property. Instead, the executor is required only to report on the Information Return, in accordance with the instructions for that form, that some or all of the property subject to reporting is excepted property described in this paragraph (f). Further, the executor is not required to identify or provide any other information for excepted property on any Statement furnished to a beneficiary and, if this property is the only property that a beneficiary has acquired, an executor is not required to furnish a Statement to that beneficiary.

(2) *List of excepted property.* Excepted property includes—

(i) United States dollars (as defined in paragraph (f)(3) of this section).

(ii) United States dollar-denominated demand deposits.

(iii) Certificates of deposit denominated in United States dollars.

(iv) Cash collateral denominated in United States dollars held by a third party to secure a liability (such as a deposit of purchase money or a security deposit).

(v) Shares of a registered investment company priced in United States dollars that is a money market fund under Rule 2a–7 under the Investment Company Act of 1940 (17 CFR 270.2a).

(vi) Life insurance proceeds on the life of the decedent payable in a lump sum in United States dollars.

(vii) Federal, State, and local tax refunds and other refunds payable in United States dollars.

(viii) Notes that are forgiven in full by the decedent upon the decedent's death, whether or not denominated in United States dollars.

(ix) Household and personal effects for which an appraisal is not required under § 20.2031–6(b) of this chapter.

(x) Property that, prior to distribution from the estate or the decedent's revocable trust, is completely sold, exchanged, or otherwise disposed of in one or more transactions that are recognition events for Federal income tax purposes (whether or not resulting in a gain or loss, and whether or not any gain is capital or ordinary). Such property includes, but is not limited to—

(A) Property distributed in satisfaction of a pecuniary bequest on which the estate recognizes any gain or loss pursuant to § 1.661(a)–2(f);

(B) Property for which an election under section 643(e)(3) has been made for the estate to recognize any gain or loss;

(C) Interests in a business entity that are redeemed for United States dollars prior to being distributed to the beneficiary;

(D) Property disposed of in a transaction described in section 267(a) and (b)(13); and

(E) Property subject to the mark to market accounting method at the time of distribution from the estate or from the decedent's revocable trust.

(xi) Other property having an initial basis that is not in any way determined with regard to or derived from the property's fair market value for Federal estate tax purposes. For purposes of this section, such property includes but is not limited to—

(A) Annuity contracts subject to section 72 and amounts received as an annuity subject to section 72;

(B) An interest in property that consists entirely of the right to receive an item of income in respect of a decedent as defined in section 691;

(C) Amounts received under installment obligations arising from a transaction for which the installment method for determining gain under section 453 applies;

(D) Appreciated property described in section 1014(e) that is acquired by the decedent within 1 year of death;

(E) Stock of a passive foreign investment company subject to section 1296(i), but only if the basis of such stock is the adjusted basis in the hands

of the decedent immediately before the decedent's death; and

(F) Interests in and distributions from retirement plans and deferred compensation plans, including individual retirement arrangements as defined in sections 408 and 408A, that are expressed entirely in United States dollars.

(xii) Bonds to the extent that they are redeemed by the issuer for United States dollars prior to being distributed to a beneficiary so that any resulting gain or loss is recognized by the estate.

(xiii) Property included in the gross estate of a beneficiary who died before the due date of the Information Return.

(xiv) Any other property that is identified as excepted property in published guidance in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2)(ii)(b) of this chapter).

(3) *United States dollars defined.* For purposes of this paragraph (f), the term *United States dollars* means the official currency of the United States. The term *United States dollars* includes physical bills and coins for which the value of each bill or coin is equivalent to the face amount of that bill or coin. This definition does not include other physical United States bills or coins with numismatic value because these bills or coins typically do not have a value equal to their face value.

(4) *Examples.* The following examples illustrate the application of this paragraph (f). In each case, the decedent D was a U.S. citizen and D's executor E is required under section 6018 to file an estate tax return.

(i) *Example 1—Reporting household and personal effects.* Included in D's gross estate are D's household and personal effects. The only item included in D's household and personal effects with a value in excess of \$3,000 is a painting. E attaches to D's estate tax return an appraisal of the painting prepared in accordance with § 20.2031–6(b) of this chapter and a room-by-room itemization of D's other household and personal effects prepared in accordance with § 20.2031–6(a) of this chapter. E must furnish to the beneficiary of the painting the Statement required by paragraph (c)(2) of this section. E is not required to report on a Statement furnished to any beneficiary any information about D's other household and personal effects. If a beneficiary of D's household effects, other than the beneficiary of the painting, has acquired no other property, E is not required to furnish a Statement to that beneficiary. E is required to file the Information Return required by section (c)(1) of this section and attach to that Information

Return a copy of the Statement furnished to the beneficiary of the painting. E must disclose on the Information Return that some or all of the property included in D's gross estate is excepted property described in this paragraph (f).

(ii) *Example 2—Reporting if property is disposed of in taxable transaction.* Included in D's estate are shares in X, a publicly traded company. Shortly after D's death but prior to the filing of the estate tax return for D's estate, X is acquired by T, also a publicly traded company. In exchange for the shares in X, the estate receives shares in T and cash in a fully taxable transaction. E is required to report on the Information Return required by paragraph (c)(1) of this section that some or all of the property included in D's gross estate is excepted property described in this paragraph (f). E is not required to furnish a Statement to any recipient with respect to the cash, X stock, or T stock.

(iii) *Example 3—Reporting if estate is liquidated prior to distribution.* Property A is the only property in D's estate. Prior to filing the estate tax return for D's estate, E sells Property A for \$15,000,000. D's estate recognizes gain on the sale of Property A for income tax purposes. E distributes the \$15,000,000 among the beneficiaries of D's estate. E must file the Information Return required by paragraph (c)(1) of this section even though all of the property included in D's gross estate is excepted property within the meaning of this paragraph (f). E is not required to furnish to the beneficiaries of D's estate a Statement with regard to Property A, and therefore is not required to attach a copy of any Statement to the Information Return. E is required to file an Information Return with the IRS indicating that all of the property included in D's gross estate is excepted property described in this paragraph (f), and must provide other information as required by the Information Return and the instructions.

(g) *Beneficiaries—(1) In general.* Each person who acquires (or will acquire) property from a decedent or by reason of the decedent's death that is subject to the reporting described in paragraph (e) of this section is a beneficiary for purposes of this section and thus is a person to be listed on the Information Return and, except with respect to excepted property (described in paragraph (f) of this section), is a person to whom the executor must furnish a required Statement. Thus, a beneficiary may be:

(i) An individual, including one who is both the executor and a beneficiary,

who acquires (or will acquire) property subject to reporting not in trust;

(ii) The estate of a deceased individual who survived the decedent if such individual or estate acquires (or will acquire) property subject to reporting not in trust;

(iii) A trust, whether foreign or domestic, including without limitation a grantor retained annuity trust, charitable remainder trust, and charitable lead trust (each referred to in this section as *beneficiary trusts*); or

(iv) An entity other than a trust, including without limitation a business entity or an organization described in section 501(c).

(2) *Required Statement to beneficiary trust—(i) In general.* If a beneficiary trust is the beneficiary to be identified on the Information Return pursuant to paragraph (g)(1) of this section, the executor must furnish the Statement described in paragraph (c)(2) of this section to the trustee rather than to the beneficiaries of the trust. However, if the executor reasonably believes that it is unlikely that the beneficiary trust will depreciate, sell, or otherwise dispose of the property subject to reporting in a recognition event for income tax purposes but instead will distribute the property in kind to the trust beneficiaries, the executor instead may furnish the Statement described in paragraph (c)(2) of this section to each of the trust beneficiaries, with copies of the Statements to the trustee. For this purpose, the trust beneficiaries include all potential current income beneficiaries and each remainderman who would have had a current interest in the trust if one or more of the income beneficiaries had died immediately after the decedent. For purposes of determining the due date of such Statements, each trust beneficiary will be deemed to have acquired the trust property when the trust acquired that property.

(ii) *Beneficiary trust not yet established.* If, by the date required for filing the Information Return with the IRS, a beneficiary trust does not have at least one trustee and a tax identification number, an executor must report on the Information Return that the beneficiary trust has not yet been established in accordance with the instructions. Once the beneficiary trust has been established and the trust information becomes available to the executor, the executor must supplement the required reporting as described in paragraph (d) of this section to update the beneficiary information on the Information Return and Statement.

(3) *Required Statement to the holder of a split interest in property, not in*

trust. The beneficiary of a life estate not in trust, and thus the beneficiary to whom the executor is to furnish any required Statement, is the life tenant. Similarly, the beneficiary of a remainder interest not in trust is each remainderman identified as if the life tenant were to die immediately after the decedent. For purposes of determining the due date of the Statements reporting these interests under paragraph (c)(3) of this section, each beneficiary will be deemed to have acquired the property subject to reporting on the date of the decedent's death. The beneficiary of a contingent interest, not in trust, is a beneficiary only if the contingency occurs before the end of the period during which the executor has an obligation to supplement the reporting as provided in paragraph (d)(5) of this section. If the contingency occurs during this period, the executor must update the beneficiary information on the Information Return and furnish a Statement to that beneficiary pursuant to the executor's duty to supplement to report a change in beneficiary information as described in paragraph (d) of this section. Usufruct interests are treated in the same manner.

(4) *Reporting for a missing beneficiary.* If the executor is unable to locate a beneficiary by the date required for filing the Information Return with the IRS, the executor must report on the Information Return the failure to locate the beneficiary and the efforts the executor has made to locate the beneficiary. The executor must supplement the Information Return and must furnish the required Statement, as provided in paragraph (d) of this section, to report the subsequent location of the beneficiary or, if the beneficiary is not located, to report the distribution of the property subject to reporting to a different beneficiary.

(h) *Reporting requirements applicable to trustees—(1) Circumstances under which trustees of beneficiary trusts and other trusts are subject to reporting.* Trustees of beneficiary trusts making a distribution of property that was reported on a Statement furnished to those trustees, or of any other property the basis of which is determined, in whole or in part, by reference to the basis of property subject to reporting under paragraph (e) of this section, are subject to the reporting requirements described in paragraph (h)(2) of this section and the supplemental reporting requirements described in paragraph (d) of this section (to the extent applicable) with respect to such property. In addition, trustees of trusts that receive a distribution of such property, whether from a beneficiary trust or from any

other trust that has received such property, either directly or indirectly, also are subject to these reporting requirements when making a distribution of that property. This reporting obligation imposed on trustees continues to apply for each subsequent transfer or distribution until the property is distributed to a beneficiary not in trust. However, no trustee of a beneficiary trust or of a subsequent recipient trust is subject to the reporting requirements described in paragraph (h)(2) of this section for a disposition of property in a transaction that is a recognition event for income tax purposes (whether or not resulting in a gain or loss) that results in the entire property having a basis that no longer is related, in whole or in part, to the property's final value or, if applicable, reported value (within the meaning of § 1.1014–10(b)(1) or (2), respectively).

(2) *Required reporting.* On or before January 31 of the calendar year immediately following the year during which occurs a distribution of property subject to reporting under this paragraph (h), the trustee making the distribution must file an Information Return in accordance with the instructions for that form and must furnish a Statement to each recipient of the distribution. For purposes of this section, each recipient is a beneficiary.

(3) *Example.* The following example illustrates the application of this paragraph (h). Decedent D was a U.S. citizen and D's executor E was required under section 6018 to file an estate tax return. Pursuant to the will of D, E distributed 100 shares of publicly traded stock in Company X to a trust (Children's Trust) for the benefit of D's two children A and B and their respective issue. E provided a Statement to the trustee of Children's Trust in accordance with the requirements of paragraph (c)(2) of this section. Shortly thereafter, pursuant to the terms of Children's Trust, Children's Trust terminates with the 100 shares of Company X stock being distributed in equal shares between Trust A, for the benefit of A and A's issue, and Trust B, for the benefit of B and B's issue. Pursuant to paragraph (h)(2) of this section, the trustee of Children's Trust files an Information Return with the IRS and furnishes a Statement to the trustees of Trust A and Trust B. Several years later, the trustee of Trust A distributes its 50 shares of Company X stock to C,

the only child of A. Pursuant to this paragraph (h), the trustee of Trust A files an Information Return with the IRS and furnishes a Statement to C. Shortly thereafter, C gives the 50 shares of Company X stock, outright, to C's nephew N. C has no obligation to file an Information Return with the IRS or furnish a Statement to N to report the distribution of the 50 shares of Company X stock to N.

(i) *Penalties.* For the penalties applicable to the filing of Information Returns and the furnishing of Statements required by this section, including waivers for reasonable cause, see sections 6721 through 6724 and the regulations in part 301 under sections 6721 through 6724.

(j) *Applicability date.* This section applies to executors of the estate of a decedent who are required to file a Federal estate tax return under section 6018 if that return is filed after September 17, 2024, and to trustees receiving certain property included in the gross estate of such a decedent.

■ **Par. 8.** Section 1.6662–9 is added to read as follows:

§ 1.6662–9 Inconsistent estate basis reporting.

(a) *In general.* Section 6662(a) and (b)(8) impose an accuracy-related penalty on the portion of any underpayment of tax required to be shown on an income tax return that is attributable to an inconsistent estate basis.

(b) *Inconsistent estate basis—(1) In general.* There is an *inconsistent estate basis* in property under section 6662(k) to the extent that a taxpayer claims a basis that was determined by using an initial basis as defined in § 1.1014–10(a)(2) that exceeds the property's final value as determined under § 1.1014–10(b)(1). The property to which this section applies is the property described in § 1.1014–10(c)(1).

(2) *Example.* The following example illustrates the provisions of paragraph (b)(1) of this section. In year 1, taxpayer (T), a citizen of the United States, inherited a house, property described in § 1.1014–10(c)(1) and not described in § 1.1014–10(c)(2). The final value and thus initial basis of the house as determined under § 1.1014–10(b) was \$300,000. In year 5, T spent \$85,000 on an addition to the house, which is added to T's initial basis in the house under section 1016(a). In year 11, T sold

the house to an unrelated third party for \$650,000. On T's return, T claims an initial basis of \$400,000 and the \$85,000 spent on the addition to the house, for a total claimed basis of \$485,000. T's claimed initial basis exceeds the allowable basis by \$100,000. Because this amount is due to T claiming an initial basis as defined in § 1.1014–10(a)(2) that exceeds the property's final value as determined under § 1.1014–10(b), T is liable for the 20% accuracy-related penalty for the portion of any underpayment that is attributable to the reporting of an inconsistent basis.

(c) *Applicability date.* This section applies to property described in § 1.1014–10(c)(1) that is reported on an estate tax return required under section 6018 that is filed after September 17, 2024.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 9.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 10.** Section 301.6721–1 is amended by revising paragraph (h)(2)(xii) and paragraph (j) to read as follows:

§ 301.6721–1 Failure to file correct information returns.

* * * * *

(h) * * *

(2) * * *

(xii) Section 6035 (relating to basis information with respect to property acquired from a decedent, generally Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*), whether an initial or supplemental information return.

* * * * *

(j) *Applicability dates—(1) In general.* Except as provided in paragraph (j)(2) of this section, this section applies with respect to information returns required to be filed on or after January 1, 2024. See 26 CFR 301.6721–1, as revised April 1, 2023, for rules applicable prior to January 1, 2024.

(2) *Exception.* Paragraph (h)(2)(xii) of this section applies with respect to information returns required to be filed after September 17, 2024.

■ **Par. 11.** Section 301.6722–1 is amended by revising paragraph (e)(2)(xxv) and paragraph (g) to read as follows:

§ 301.6722–1 Failure to furnish correct payee statements.

* * * * *

(e) * * *

(2) * * *

(xxxv) Section 6035 (relating to basis information with respect to property acquired from a decedent, generally Schedule A of Form 8971, *Information Regarding Beneficiaries Acquiring Property from a Decedent*), other than an information return described in

section 6724(d)(1)(D), whether an initial or supplemental payee statement;

* * * * *

(g) *Applicability dates*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies with respect to payee statements required to be furnished on or after January 1, 2024. See 26 CFR 301.6722–1, as revised April 1, 2023, for rules applicable prior to January 1, 2024.

(2) *Exception.* Paragraph (e)(2)(xxxv) of this section applies with respect to

payee statements required to be furnished after September 17, 2024.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: August 16, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–20429 Filed 9–16–24; 8:45 am]

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